

ATTACHMENT 4

Insurance Requirements

Contractors shall be required to procure, at their sole cost and expense, and shall maintain in force at all times during the term of any Contract resulting from this Solicitation, policies of insurance as required by this Attachment. All insurance required by this Attachment shall be written by companies that have an A.M. Best Company rating of “A-,” Class “VII” or better. In addition, companies writing insurance intended to comply with the requirements of this Attachment should be licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York. OGS may, in its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when certificates and/or other policy documents are accompanied by a completed Excess Lines Association of New York (ELANY) affidavit or other documents demonstrating the company’s strong financial rating. If, during the term of a policy, the carrier’s A.M. Best rating falls below “A-,” Class “VII,” the insurance must be replaced, on or before the renewal date of the policy, with insurance that meets the requirements above.

The Contractor shall deliver to OGS evidence of such policies in a form acceptable to OGS. Policies must be written in accordance with the requirements of the paragraphs below, as applicable. While acceptance of insurance documentation shall not be unreasonably withheld, conditioned or delayed, acceptance and/or approval by OGS does not, and shall not be construed to, relieve Contractors of any obligations, responsibilities or liabilities under this Solicitation or any Contract resulting from this Solicitation.

The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the term of any Contract resulting from this Solicitation.

A. General Conditions Applicable to Insurance. All policies of insurance required by any contract resulting from this solicitation must meet the following requirements:

- 1. Coverage Types and Policy Limits.** The types of coverage and policy limits required from the Contractor are specified in Paragraph B Insurance Requirements below.
- 2. Policy Forms.** Except as may be otherwise specifically provided herein, or agreed to in any Contract resulting from this solicitation, all policies of insurance required by this Attachments shall be written on an occurrence basis.
- 3. Certificates of Insurance/Notices.** Bidders and Contractors shall provide OGS with a Certificate or Certificates of Insurance, in a form satisfactory to OGS as detailed below, and pursuant to the timelines set forth in Section A.13. below. Certificates shall name The New York State Office of General Services, Bureau of Risk and Insurance Management (BRIM), 32nd Floor, Corning Tower, Empire State Plaza, Albany, New York 12242 as the certificate holder.

Certificates of Insurance shall:

- Be in the form acceptable to OGS and in accordance with the New York State Insurance Law (e.g., an ACORD certificate);
- Disclose any deductible, self-insured retention, aggregate limit or exclusion to the policy that materially changes the coverage required by this Solicitation or any Contract resulting from this Solicitation;
- Be signed by an authorized representative of the referenced insurance carriers; and
- Contain the following language in the Description of Operations / Locations / Vehicles section of the Certificate or on a submitted endorsement: Additional insured protection afforded is on a primary and non-contributory basis. A waiver of subrogation is granted in favor of the additional insureds.

Only original documents (certificates of insurance and any endorsements and other attachments) or electronic versions of the same that can be directly traced back to the insurer, agent or broker via e-mail distribution or similar means will be accepted.

OGS generally requires Contractors to submit only certificates of insurance and additional insured endorsements, although OGS reserves the right to request other proof of insurance. Contractors should

refrain from submitting entire insurance policies, unless specifically requested by OGS. If an entire insurance policy is submitted but not requested, OGS shall not be obligated to review and shall not be chargeable with knowledge of its contents. In addition, submission of an entire insurance policy not requested by OGS does not constitute proof of compliance with the insurance requirements and does not discharge Contractors from submitting the requested insurance documentation.

4. **Primary Coverage.** All liability insurance policies shall provide that the required coverage shall be primary and non-contributory to other insurance available to the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this Solicitation and their officers, agents, and employees. Any other insurance maintained by the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this Solicitation and their officers, agents, and employees shall be excess of and shall not contribute with the Bidder/Contractor's insurance.
5. **Breach for Lack of Proof of Coverage.** The failure to comply with the requirements of this Attachment at any time during the term of any Contract resulting from this Solicitation shall be considered a breach of the terms of any Contract resulting from this Solicitation and shall allow the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this Solicitation and their officers, agents, and employees to avail themselves of all remedies available under any Contract resulting from this Solicitation, at law or in equity.
6. **Self-Insured Retention/Deductibles.** Certificates of Insurance must indicate the applicable deductible/self-insured retentions for each listed policy. Deductibles or self-insured retentions above \$100,000.00 are subject to approval from OGS. Such approval shall not be unreasonably withheld, conditioned or delayed. Bidders and Contractors shall be solely responsible for all claim expenses and loss payments within the deductibles or self-insured retentions. If the Bidder/Contractor is providing the required insurance through self-insurance, evidence of the financial capacity to support the self-insurance program along with a description of that program, including, but not limited to, information regarding the use of a third-party administrator shall be provided upon request.
7. **Subcontractors.** Prior to the commencement of any work by a Subcontractor, the Contractor shall require such Subcontractor to procure policies of insurance as required by this Attachment and maintain the same in force during the term of any work performed by that Subcontractor. An Additional Insured Endorsement CG 20 38 04 13 (or the equivalent) evidencing such coverage shall be provided to the Contractor prior to the commencement of any work by a subcontractor and pursuant to the timelines set forth in Section A.13. below, as applicable, and shall be provided to OGS upon request. For subcontractors that are self-insured, the subcontractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the subcontractor would have been required to pursuant to this section had the subcontractor obtained such insurance policies.
8. **Waiver of Subrogation.** For all liability policies (with the exception of Professional Liability Insurance) and the workers' compensation insurance required below, the Bidder/Contractor shall cause to be included in its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this Solicitation and their officers, agents, and employees, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if the Contractor waives or has waived before the casualty, the right of recovery against The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this Solicitation and their officers, agents, and employees or (ii) any other form of permission for the release of The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this Solicitation and their officers, agents, and employees. A Waiver of Subrogation Endorsement shall be provided upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.
9. **Additional Insured.** The Contractor shall cause to be included in each of the liability policies (with the exception of Professional Liability Insurance) required below coverage for on-going and completed operations naming as additional insureds (via ISO coverage forms CG 20 10 04 13 or 20 38 04 13 and CG 20 37 04 13 and form CA 20 48 10 13, or a form or forms that provide equivalent coverage): The People of

the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this Solicitation and their officers, agents, and employees. An Additional Insured Endorsement evidencing such coverage shall be provided to OGS pursuant to the timelines set forth in Section 13 below. A blanket Additional Insured Endorsement evidencing such coverage is also acceptable. For Contractors who are self-insured, the Contractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the Contractor would have been required to pursuant to this Attachment had the Contractor obtained such insurance policies.

- 10. Excess/Umbrella Liability Policies.** Required insurance coverage limits may be provided through a combination of primary and excess/umbrella liability policies. If coverage limits are provided through excess/umbrella liability policies, then a Schedule of underlying insurance listing policy information for all underlying insurance policies (insurer, policy number, policy term, coverage and limits of insurance), including proof that the excess/umbrella insurance follows form must be provided upon request.
- 11. Notice of Cancellation or Non-Renewal.** Policies shall be written so as to include the requirements for notice of cancellation or non-renewal in accordance with the New York State Insurance Law. Within five (5) business days of receipt of any notice of cancellation or non-renewal of insurance, the Contractor shall provide OGS with a copy of any such notice received from an insurer together with proof of replacement coverage that complies with the insurance requirements of this Solicitation and any Contract resulting from this Solicitation.
- 12. Policy Renewal/Expiration.** Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the insurance requirements set forth in this Solicitation and any Contract resulting from this Solicitation shall be delivered to OGS. If, at any time during the term of any Contract resulting from this Solicitation, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this Solicitation or any Solicitation and any Contract resulting from this Solicitation, or proof thereof is not provided to OGS, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by OGS.
- 13. Deadlines for Providing Insurance Documents after Renewal or Upon Request.** As set forth herein, certain insurance documents must be provided to the OGS BRIM contact identified in the Contract Award Notice after renewal or upon request. This requirement means that the Contractor shall provide the applicable insurance document to OGS as soon as possible but in no event later than the following time periods:
 - For certificates of insurance: 5 business days from request or renewal, whichever is later;
 - For information on self-insurance or self-retention programs: 15 calendar days from request or renewal, whichever is later;
 - For other requested documentation evidencing coverage: 15 calendar days from request or renewal, whichever is later;
 - For additional insured and waiver of subrogation endorsements: 30 calendar days from request or renewal, whichever is later; and
 - For notice of cancellation or non-renewal and proof of replacement coverage that complies with the requirements of this section: 5 business days from request or renewal, whichever is later.

Notwithstanding the foregoing, if the Contractor shall have promptly requested the insurance documents from its broker or insurer and shall have thereafter diligently taken all steps necessary to obtain such documents from its insurer and submit them to OGS, OGS shall extend the time period for a reasonable period under the circumstances, but in no event shall the extension exceed 30 calendar days.

B. Insurance Requirements.

The Contractor shall obtain and maintain in full force and effect, throughout the term of any Contract resulting from this Solicitation, at their own expense, the following insurance with limits not less than those described below and as required by the terms of any Contract resulting from this Solicitation, or as required by law, whichever is greater:

Insurance Type		Proof of Coverage is Due
Commercial General Liability	Not less than \$2,000,000 each occurrence	At time of Bid submission and updated in accordance with Contract
General Aggregate	\$2,000,000	
Products-Completed Operations Aggregate	\$2,000,000	
Personal and Advertising Injury	\$1,000,000	
Business Automobile Liability Insurance	Not less than \$2,000,000 each occurrence	
Data Breach/Cyber Liability	Not less than \$5,000,000 each occurrence	
Professional Liability	Not less than \$2,000,000 each occurrence	
Workers' Compensation		
Disability Benefits		

- 1. Commercial General Liability Insurance** Such liability shall be written on the current edition of ISO occurrence form CG 00 1, or a substitute form providing equivalent coverage and shall cover liability arising from premises operations, independent contractors, broad form property damage, personal & advertising injury, cross liability coverage, and liability assumed from all work and operation under any contract resulting from this solicitation (including the tort liability of another assumed in a contract):

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- General Aggregate
- Products/Completed Operations
- Personal Advertising Injury

Coverage shall include, but not be limited to, the following:

- premises liability,
- independent contractors,
- blanket contractual liability, including tort liability of another assumed in a contract,
- defense and/or indemnification obligations, including obligations assumed under any contract resulting from this solicitation,
- cross liability for additional insureds, and
- products/completed operations for a term of no less than 3 years, commencing upon acceptance of the work, as required by any contract resulting from this solicitation

- 2. Business Automobile Liability Insurance:** Such insurance shall cover liability arising out of automobiles used in connection with performance under any Contract resulting from this Solicitation, including owned, leased, hired and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear, license plates.

In the event that the Contractor does not own, lease or hire any automobiles used in connection with performance under any Contract resulting from this Solicitation, the Contractor does not need to obtain Business Automobile Liability Insurance, but must attest to the fact that the Contractor does not own, lease or hire any automobiles used in connection with performance under any Contract resulting from this Solicitation on a form provided by OGS. If, however, during the term of the Contract, the Contractor acquires, leases or hires any automobiles that will be used in connection with performance under any Contract resulting from this Solicitation, the Contractor must obtain Business Automobile Liability Insurance that meets all of the requirements of this section and provide proof of such coverage to OGS in accordance with the insurance requirements of any Contract resulting from this Solicitation.

In the event that the Contractor does not own or lease any automobiles used in connection with performance under any Contract resulting from this Solicitation, but the Contractor does hire and/or utilize

non-owned automobiles in connection with performance under any Contract resulting from this Solicitation, the Contractor must: (i) obtain Business Automobile Liability Insurance as required by this Solicitation or any Contract resulting from this Solicitation, except that such insurance may be limited to liability arising out of hired and/or non-owned automobiles, as applicable; and (ii) attest to the fact that the Contractor does not own or lease any automobiles used in connection with performance under any Contract resulting from this Solicitation, on a form provided by OGS. If, however, during the term of any Contract resulting from this Solicitation, the Contractor acquires or leases any automobiles that will be used in connection with performance under any Contract resulting from this Solicitation, the Contractor must obtain Business Automobile Liability Insurance that meets all of the requirements of this Attachment and provide proof of such coverage to OGS in accordance with the insurance requirements of any Contract resulting from this Solicitation.

- 3. Data Breach/Cyber Liability Insurance:** Contractors are required to maintain during the term of this Contract and as otherwise required herein, Data Breach and Privacy/Cyber Liability Insurance, including coverage for failure to protect confidential information and failure of the security of the Contractor's computer systems or the Authorized Users' systems due to the actions of the Contractor which results in unauthorized access to the Authorized User(s) or their data.

Said Insurance shall provide coverage for damages arising from, but not limited to the following:

- Breach of duty to protect the security and confidentiality of nonpublic proprietary corporate information;
- Personally identifiable nonpublic information (e.g., medical, financial, or personal in nature in electronic or non-electronic form);
- Privacy notification costs;
- Regulatory defense and penalties;
- Website media liability; and
- Cyber theft of customer's property, including but not limited to money and securities.

If the policy is written on a claims made basis, the Contractor must purchase an Extended Reporting Period ("tail coverage") providing coverage for no less than one (1) year after work is completed in the event that coverage is cancelled or not renewed. This requirement applies to both primary and excess liability policies, as applicable.

- 4. Professional Liability Insurance:** The Contractor shall maintain, during the term of this Contract, Technology Errors and Omissions Insurance, which may be included in the Data Breach/Cyber Liability policy, for claims for damages arising from computer related services including, but not limited to, the following: consulting, data processing, programming, system integration, hardware or software development, installation, distribution or maintenance, systems analysis or design, training, staffing or other support services, any electronic equipment, computer software developed, manufactured, distributed, licensed, marketed or sold. The policy shall include coverage for third party fidelity from cyber theft if coverage is not met in a Data Breach and Privacy/Cyber Liability policy.

If the policy is written on a claims made basis, the Contractor must purchase an Extended Reporting Period ("tail coverage") providing coverage for no less than one (1) year after work is completed in the event that coverage is cancelled or not renewed. This requirement applies to both primary and excess liability policies, as applicable.

- 5. Workers' Compensation Insurance and Disability Benefits Requirements:**

New York State Workers' Compensation Law (WCL) §57 & §220 requires the heads of all municipal and state entities to ensure that businesses applying for permits, licenses, or contracts document it has appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals, whether the governmental agency is having the work done or is simply issuing the permit, license, or contract. Failure to provide proof of such coverage or a legal exemption will result in a rejection of your bid or renewal.

Proof of Compliance with Workers' Compensation Coverage Requirements. An ACORD form is NOT acceptable proof of workers' compensation coverage. In order to provide proof of compliance with the requirements of the New York State Workers' Compensation Law pertaining to workers' compensation coverage, a contractor shall:

- a. Be legally exempt from obtaining Workers' Compensation insurance coverage; or
- b. Obtain such coverage from an insurance carrier; or
- c. Be a Workers' Compensation Board-approved self-insured employer or participate in an authorized self-insurance plan.

A Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to the Office of General Services **within five (5) business days of notification of tentative award:**

- a. Form CE-200, Certificate of Attestation for New York Entities with No Employees and Certain out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is not required, which is available on the Workers' Compensation Board's website (www.wcb.ny.gov); (Reference applicable bid and Group #s on the form.)
- b. Certificate of Workers' Compensation Insurance:
 - 1. Form C-105.2 (9/07) if coverage is provided by the contractor's insurance carrier, contractor must request its carrier to send this form to the New York State Office of General Services, or
 - 2. Form U-26.3 if coverage is provided by the State Insurance Fund, a contractor must request that the State Insurance Fund send this form to the New York State Office of General Services.
- c. Form SI-12, Certificate of Workers' Compensation Self-Insurance available from the New York State Workers' Compensation Board's Self-Insurance Office.
- d. Form GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance available from the contractor's Group Self-Insurance Administrator.

Proof of Compliance with Disability Benefits Coverage Requirements: In order to provide proof of compliance with the requirements of the New York State Workers' Compensation Law pertaining to disability benefits, a contractor shall:

- a. Be legally exempt from obtaining disability benefits coverage; or
- b. Obtain such coverage from and insurance carrier; or
- c. Be a Board-approved self-insured employer.

A Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to the Office of General Services **within five (5) business days of notification of tentative award:**

- a. Form CE-200, Certificate of Attestation for New York Entities with No Employees and Certain out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is not required, which is available on the Workers' Compensation Board's website (www.wcb.ny.gov); (Reference applicable bid and Group #s on the form.)
- b. Form DB-120.1 Certificate of Disability Benefits Insurance. A contractor must request its business insurance carrier to send this form to the New York State Office of General Services; or
- c. Form DB-155, Certificate of Disability Benefits Self-Insurance. A contractor must call the Board's Self-Insurance Office at 518-402-0247 to obtain this form.