



**Office of General Services  
Procurement Services**

Corning Tower, Empire State Plaza, Albany, NY 12242 | <https://ogs.ny.gov/procurement> | [customer.services@ogs.ny.gov](mailto:customer.services@ogs.ny.gov) | 518-474-6717

# Invitation for Bids

**Redline; For Information Only; Do not submit with bid**

<b>BID OPENING</b> <b>DATE:</b> October 21, 2021 <b>TIME:</b> 11:00 A.M. EST <b>INVITATION FOR BIDS NUMBER:</b> 23237	<b>TITLE:</b> Group 05600 - GASOLINE & E85  <b>Classification Codes:</b> 15 Fuels & Lubricants
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**CONTRACT PERIOD:** December 17, 2021- December 14, 2023 with 3-year renewal options

**DESIGNATED CONTACTS:** In accordance with the Procurement Lobbying Law [State Finance Law § 139-j(2)(a)], the following individuals are the Designated Contacts for this Solicitation. All questions relating to this Solicitation must be addressed to the Designated Contacts.

Email Address: OGS.sm.PS\_CM\_FleetFuelRoads@ogs.ny.gov

Bryant Kirk Contract Management Specialist 2 Telephone No. (518) 402-3021 E-mail address: OGS.sm.PS_CM_FleetFuelRoads@ogs.ny.gov	Daniel DeBerardinis, CPPB Team Leader Telephone No. (518) 473-7011 E-mail address: OGS.sm.PS_CM_FleetFuelRoads@ogs.ny.gov
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<b>Bidder's Federal Tax Identification Number:</b> <i>(Do Not Use Social Security Number)</i>	<b>NYS Vendor Identification Number:</b> <i>(See New York State Vendor File Registration Clause)</i>
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Legal Business Name of Company Bidding:

D/B/A – Doing Business As (if applicable):

Street	City	State	County	Zip Code
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E-mail Address:	Company Web Site:
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If applicable, place an "x" in the appropriate box(es) *(check all that apply)*

<input type="checkbox"/> NYS Small Business # Employees	<input type="checkbox"/> Service Disabled Veteran Owned Business	<input type="checkbox"/> NYS Minority Owned Business	<input type="checkbox"/> NYS Women Owned Business
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If you are not bidding, place an "x" in the box and return this page only.

WE ARE NOT BIDDING AT THIS TIME BECAUSE:

**FOR PROCUREMENT SERVICES USE ONLY**

LITERATURE <input type="checkbox"/>	LETTER <input type="checkbox"/>	USB FLASH DRIVE <input type="checkbox"/>	# of Binders/Packages: _____
PURC. MEMO <input type="checkbox"/>	OTHER <input type="checkbox"/>	_____	Documented by: _____

## Bidder Certification and Affirmation

Bidder certifies and affirms as follows:

1. This Bid is an irrevocable offer for 90 days from the date of submission to the New York State (“NYS”) Office of General Services (“OGS”), or for such longer period as is set forth in the Invitation for Bids.
2. The Bidder can and will provide and make available, at a minimum, the Products, deliverables and/or services as described in the Invitation for Bids.
3. The Bidder has read and understands the provisions of the Invitation for Bids, and all appendices, attachments, and exhibits attached thereto, including Appendix A (Standard Clauses for New York State Contracts) and Appendix B (General Specifications).
4. The information contained in this Bid is complete, true, and accurate.
5. The Bidder understands and agrees to comply with the requirements of the Procurement Lobbying Law, State Finance Law § 139-j and § 139-k, and with OGS’s procedures relating to permissible contacts during a procurement as required by State Finance Law § 139-j(3) and § 139-j(6)(b). Such requirements and procedures are posted at <https://ogs.ny.gov/acpl>.

The signer affirms under penalties of perjury that he or she is duly authorized to legally bind the Bidder referenced above and that he or she signed this Bidder Certification as the legally binding act of the Bidder.

\_\_\_\_\_  
Print Full Bidder Entity Name

By: \_\_\_\_\_  
Signature of Person Authorized to  
Legally Bind the Bidder

\_\_\_\_\_  
Print Name of Signatory

\_\_\_\_\_  
Print Title of Signatory

\_\_\_\_\_  
Date

**RETURN THIS PAGE AS PART OF BID**

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**APPENDICES**

- Appendix A – *Standard Clauses for NYS Contracts (October 2019)*
- Appendix B – *General Specifications (April 2016)*
- Appendix C – *Federal Emergency Management Agency Terms and Conditions*

**ATTACHMENTS**

- Attachment 1 – *Pricing*
- Attachment 2 – *NYS Required Certifications*
- Attachment 3 – *Encouraging Use of NYS Businesses*
- Attachment 4 – *Insurance Requirements*
- Attachment 5 – *Bidder Information Questionnaire*
- Attachment 6 – *Bidder Submission Checklist*
- Attachment 7 – *Bidder Questions Form*
- Attachment 8 – *Report of Contract Usage*
- Attachment 9 – *Delivery Schedule – State Agencies*
- Attachment 10 – *Delivery Schedule – Political Subdivisions, Local Governments, & Other Eligible Non-State Agencies*
- Attachment 11 – *Intent to Bid*

## 1. INTRODUCTION

### 1.1 Overview

This Solicitation is issued by the New York State (“NYS”) Office of General Services (“OGS”), Procurement Services to provide Authorized Users with a means of acquiring various grades of Gasoline and E-85 by bulk delivery to Authorized Users’ storage facilities for use in the Authorized Users’ own pumps. The product shall be Contractor furnished, delivered and unloaded as specified herein.

This Solicitation outlines the terms and conditions and all applicable information required for submitting a Bid. Bidders are strongly encouraged to read the language of this Solicitation thoroughly and to precisely follow the instructions included in the Solicitation and all attachments.

The resulting contract(s) under this award will be a centralized contract(s) based on Authorized Users’ filed requirements. There will be separate awards for Gasoline and E-85 fuels, when applicable, for all counties that have filed requirements. It is the State’s intent to award the contract(s) on the basis of lowest price to responsive and responsible Bidders, who are able to meet the terms and conditions of this Solicitation and who offer the best overall pricing in accordance with the “Method of Award” Section of this Solicitation. The awarded Bidder(s) will be granted a contract for the term and with renewal options as further described herein. Detailed information on the procurement process is set forth in the *Method of Award* Section of this Solicitation.

This Solicitation is intended to replace the contracts for all sixty (60) counties from awards #23092 and #23215.

### 1.2 Scope

This Solicitation will be conducted as a competitive sealed bid.

This Solicitation and any resultant contract(s) is intended to provide State and Non-state agencies with a method to procure Gasoline and E-85 fuels by bulk delivery.

This Solicitation contains a total of One Hundred Thirty-Seven (137) Items to be awarded. The items consist of seven (7) fuel types: Conventional (Regular, Mid-Grade, Premium), OPRG (E) (Regular, Mid-Grade, Premium), and E-85 in sixty (60) counties of New York State, which are specified by Item in Attachment 1 – *Pricing*. A Bidder must furnish its proposed pricing for all 10% ethanol fuel types in any county(ies) listed for which it wishes to bid.

It is the intent of this Solicitation to make one (1) award for all gasoline fuels and one (1) award for E-85 fuel in each of the sixty (60) counties included in the delivery schedules, where applicable.

The product shall be furnished, delivered and unloaded by the Contractor to Authorized Users’ storage tanks, as specified herein. The specific users, counties, and fuel grades are listed in the Delivery Schedule. See Attachments 9 and 10, *Delivery Schedule – State Agencies* and *Delivery Schedule – Non-State Agencies* respectively.

No awards will be made for counties without any filed requirements or bids. In the event that the same Bidder is awarded multiple awards from this Solicitation, the awards will be combined into a single Contract.

### 1.3 Estimated Quantities

A Contract resulting from this Solicitation shall be an estimated quantity Contract. No specific quantities are represented or guaranteed and the State provides no guarantee of individual Authorized User participation. The estimated quantities are based on requirements submitted to OGS by Authorized Users to purchase from the resulting Contract. These Authorized Users have agreed not to enter into any other contracts for the Gasoline and E-85 that they filed for during the resulting contract period, and the Authorized Users have agreed to purchase all of their Gasoline and E-85 needs from the contracts awarded under this Solicitation. The Contractor must furnish all quantities actually ordered, at or below the Contract prices. The anticipated quantity

of the award for this Solicitation, based on historical purchases under previous awards, is approximately 41,660,091 gallons annually for all items combined. The individual value of each resultant Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered, see clause(s) in Section 6, Terms and Conditions. See Appendix B, Estimated/Specific Quantity Contracts and Participation in Centralized Contracts.

Numerous factors could cause the actual quantities of Products purchased under a Contract resulting from this Solicitation to vary substantially from the estimates in the Delivery Schedules. Such factors include, but are not limited to, the following:

- There is no guarantee of quantities to be purchased, nor is there any guarantee that demand will continue in any manner consistent with previous purchases.
- The individual value of each Contract is indeterminate and will depend upon actual Authorized User demand and actual quantities ordered during the contract period.
- The State reserves the right to terminate any Contract for cause prior to the end of the term pursuant to the terms and conditions of the Contract. Appendix B, Section 43 (Termination) subparagraph (b) (For Convenience) is hereby deleted for purposes of this Solicitation.
- Contract pricing that is lower than anticipated could result in a higher quantity of purchases by Authorized Users than anticipated.
- In accordance with the *Delivery Schedule* clause, the Contractor(s) shall accept orders from and deliver to any State Agency placing an order through this contract even if the State Agency does not appear on the Delivery Schedule at the time of the bid opening and may accept orders for any non-State Agency or Political Subdivision not appearing on the Delivery Schedule at the time of the bid opening.
- Contract pricing that is higher than anticipated could result in a lower quantity of purchases by Authorized Users than anticipated.

By submitting a Bid, Bidder acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the resulting Contracts could vary substantially from the estimates provided in this Solicitation.

**1.4 Key Events/Dates**

<b>EVENT</b>	<b>DATE</b>	<b>TIME</b>
IFB Release	9/7/2021	N/A
Intent to Bid Due Date	9/24/2021	5:00 PM ET
Closing Date for Bidder Questions	9/24/2021	5:00 PM ET
OGS Procurement Services' Responses Bidder Questions	10/8/2021	N/A
Bid Opening / Due date for Bids	10/21/2021	11:00 AM ET
Notice of Tentative Award:	11/5/2021	N/A
Contract Approval Date / Award Publish Date	12/17/2021	N/A
Anticipated Contract(s) Begin Date:	12/17/2021	N/A

**1.5 Intent to Bid**

Bidders are required to submit an Intent to Bid. **A Bidder should indicate its intent to bid by sending an e-mail titled "INTENT TO BID – 23237 – [BIDDER NAME]" to [ogs.sm.ps\\_CM\\_FleetFuelRoads@ogs.ny.gov](mailto:ogs.sm.ps_CM_FleetFuelRoads@ogs.ny.gov) on or before the date and time indicated in the Key Events/Dates section, and the Intent to Bid must be submitted prior to the Bid Opening Date. Failure to submit an Intent to Bid on or before the date and time indicated in the Key Events/Dates section or a complete Intent to Bid may result in your company's bid being disqualified from an award.** The e-mail should indicate the Bidder's company name and a contact person and information along with the following documents.



A complete Intent to Bid consists of the following required documents:

1. A signed Attachment 11 – Intent to Bid form;
2. NYS Vendor Responsibility Questionnaire (if hard copy) or a copy of the certification (if filed online) certified within the last 6 months;
3. NYS Workers Compensation and NYS Disability Benefits Insurance coverage as referenced herein;

### **1.6 Pre-Bid Conference**

There is no pre-bid conference for this Solicitation.

### **1.7 NYS Contract Reporter**

Bidders must register with the New York State Contract Reporter (“NYSCR”) at <https://www.nyscr.ny.gov> in order to receive notifications about this Solicitation. Navigate to the “I want to find contracts to bid on” page to register for your free account. In order to receive e-mail notifications regarding updates to the content or status of a particular ad, you must “bookmark the ad” on the upper right-hand side of the ad, then return to your Account, view your list of bookmarked ads, and then select “send me notification updates” option listed to the right of the ad. Answers to all questions of a substantive nature will be posted in the form of a question and answer document and released through the NYSCR. Any updates to Solicitation documents will also be posted and released through the NYSCR.

**If you do not opt-in to receive notification updates regarding a particular ad, you will not receive e-mail notifications regarding updates, including e-mail notifications regarding the posting of the question and answer document and updates to Solicitation documents.**

Be advised that submission of responses to the Solicitation that do not reflect and take into account updated information may result in your Bid being deemed non-responsive to the Solicitation.

### **1.8 Bidder Questions**

All questions regarding this Solicitation should be submitted using Attachment 7 – *Bidder Questions Form*, citing the applicable Solicitation document name and document section. The completed form must be emailed to [OGS.sm.PS\\_CM\\_FleetFuelRoads@ogs.ny.gov](mailto:OGS.sm.PS_CM_FleetFuelRoads@ogs.ny.gov) by the date and time indicated in the *Key Events/Dates* section. Questions submitted after the deadline indicated may not be answered. A Bidder is strongly encouraged to submit questions as soon as possible. Answers to all questions of a substantive nature will be provided to all prospective Bidders in the form of a question and answer document which will be posted to the OGS website and will not identify the Bidder asking the question. Notification of this posting will be advertised in the NYS Contract Reporter (“NYSCR”). Your company must select the “opt-in” option within the Contract Reporter ad to receive notification updates of this Solicitation.

If Bidder intends to submit a Bid that deviates from the requirements of the Solicitation in any way, the proposed deviations should be submitted during the *Questions* period so that they may be given due consideration prior to the submission of Bids. See *Bid Deviations* for additional information.

### **1.9 MWBE & SDVOB Interest in Partnering with Bidders**

If a New York State certified MWBE would like to indicate its interest in working with participating Bidders, please send an e-mail entitled “*Solicitation 23237 MWBE or SDVOB INTEREST\_[COMPANY NAME]*” to [ogs.sm.ps\\_cm\\_fleetfuelroads@ogs.ny.gov](mailto:ogs.sm.ps_cm_fleetfuelroads@ogs.ny.gov) on or before the date and time Bidder Questions are due indicated in *Key Events/Dates*. The e-mail content should include:

1. Company Name
2. Contact Name, and Contact Information such as Phone Number, Mailing Address, E-Mail Address
3. Brief description of the company and the products and/or services that the company offers that are related to this Solicitation (for example “Company ABC manufactures pencils”)

4. The NYS Certification Type (Minority- and/or Women-Owned or SDVOB).
5. Include what locations in NYS the company provides services in.

A list of all NYS certified MWBE and SDVOB vendors who have expressed interest in this Solicitation through the timely submission of such email, will be made available to prospective Bidders through the publishing of a Purchasing Memorandum posted through the New York State Contract Reporter.

### 1.10 Summary of Policy And Prohibitions On Procurement Lobbying

Pursuant to State Finance Law § 139-j and § 139-k, this Solicitation includes and imposes certain restrictions on communications between OGS and a Bidder during the procurement process. A Bidder is restricted from making contacts from the earliest posting, on a governmental entity's website, in a newspaper of general circulation, or in the procurement opportunities newsletter of intent to solicit offers/Bids through final award and approval of the Procurement Contract by OGS and, if applicable, the Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law § 139-j(3)(a). Designated staff, as of the date hereof, are identified on the first page of this Solicitation and in the *MWBE Designated Contacts*, *SDVOB Designated Contacts* and *Insurance Designated Contacts* sections. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Bidder pursuant to State Finance Law §139-j and §139-k. Certain findings of non-responsibility can result in rejection for Contract award and, in the event of two findings within a four-year period, the Bidder is debarred from obtaining governmental Procurement Contracts for four years. Further information about these requirements can be found on the OGS website at: <https://www.ogs.ny.gov/acpl/>

### 1.11 Definitions

Capitalized terms used in this Solicitation shall be defined in accordance with Appendix B, Definitions, or as below.

**ASTM:** The acronym "ASTM" shall be used as a designation for the American Society for Testing and Materials. All ASTM references in the specification are understood to refer to the most recent edition of that specification/standard.

**"Bid Deviation"** shall refer to any variance submitted or proposed by a Bidder, which deviates from, adds extraneous terms to, conflicts with or offers an alternative to any term, condition, specification or requirement of the Solicitation.

**"Business Day"** shall refer to Monday through Friday from 8:00 AM – 5:00 PM ET, excluding NYS Holidays and federal holidays.

**CMSA:** The acronym, "CMSA" shall be used as a designation for Consolidated Metropolitan Statistical Area.

**Conventional Gasoline:** shall be any gasoline which has not been certified under 40\CFR, Section 80.40.  
**NOTE: MAY CONTAIN UP TO A PERCENTAGE OF ETHANOL AS SPECIFIED IN SECTION 3.11** Limits, Unleaded Gasoline (All Types).

**DEC:** The acronym, "DEC" shall be used as a designation for Dept. of Environmental Conservation.

**"Delivery":** shall be the act of taking an ordered product to person or place. Refer to *Product Delivery* clause in this Solicitation.

**E-10:** A blend of 10% ethanol and 90% petroleum gasoline by volume.

**E-85 (Flex Fuel):** A blend containing 51% to 83% ethanol and conventional regular unleaded gasoline by volume.

**ETBE:** The acronym, “ETBE” shall be used as a designation for Ethyl Tertiary Butyl Ether.

**Gasoline/s:** shall be a volatile mixture of liquid hydrocarbons, generally containing small amounts of additives, suitable for use as a fuel in spark-ignition, internal combustion engines.

**Gasoline-Alcohol Blend:** shall be a blend consisting primarily of gasoline and an amount of one or more alcohols as described below:

- Methanol: at least 1% by volume or 0.15% by mass if methanol is only alcohol present.
- Other alcohols (i.e. ethanol, TBA): at least 1% by volume or 0.35% by mass.

**Gasoline-Ether Blend:** shall be a blend consisting primarily of gasoline and a substantial amount (more than 0.35 mass percent oxygen) of one or more ethers.

**Grand Total Bid Per County:** The product of the number of gallons requested in a county for a type of gasoline requested, multiplied by the price offered by the Bidder for such gasoline type will be the total price for a requested type of gasoline. For Conventional and OPRG gasoline, the sum of total price for each type of requested fuel within a county shall result in the Grand Total Bid Per County. Pricing information will be entered on the Bid Price Submittal tab of Attachment 1, while the Grand Total Bid Per County will be calculated in the Combined Bid Price Per County tab without applying any Volume Discount. The Grand Total Bid Per County is automatically calculated in Attachment 1 based on the per item pricing in each County.

County	Fuel Type	QTY Based on Filed Requirements for 12 MOS. Volume	Price Per Gallon	Total Price	Volume Discounts Offered for Orders Greater than or equal to 5,500 gallons (dollar off per gallon)
Albany	Gas Reg.	1,285,489	\$3.4000	\$4,370,662.60	\$0.1200
Albany	Gas Mid Range	54,000	\$3.4745	\$187,623.00	\$0.1000

**Example - Bid Price Submittal tab:  
Grand Total Bid Per County tab:**

Item	County Name	Grand Total Bid Per County
Items 1 & 2	Albany	\$4,558,285.60

**Human Needs Customers:** High priority customers such as residences, hospitals and nursing homes for which failure to get fuel could be life threatening.

**LUST:** Leaking Underground Storage Tank

**May:** denotes the permissive in a Contract clause or specification. “May” does not mean “required”. See also “Shall” and “Must”

**MON:** The acronym, "MON" shall be used as a designation for Motor Octane Number.

**MSA:** The acronym, “MSA” shall be used as a designation for Metropolitan Statistical Area.

**MT:** Delivery by Motor Transport. Minimum delivery of 5,500 gallons at one time into one or more storage tanks at one location (one delivery ID from the Delivery Schedule).

**Must:** denotes the imperative in a Contract clause or specification. “Must” is synonymous with “required.” See also “Shall” and “May.”

**“MWBE”** shall refer to a business certified with NYS Empire State Development (“ESD”) as a Minority- and/or Women-owned Business Enterprise.

**NYCRR:** The acronym, “NYCRR” shall be used as a designation for New York Codes, Rules, and Regulations.

“**NYS Holidays**” refers to the legal holidays for State employees in the classified service of the executive branch, as more particularly specified on the website of the NYS Department of Civil Service. This includes the following: New Year’s Day; Dr. Martin Luther King, Jr. Day; Washington’s Birthday (observed); Memorial Day; Juneteenth; Independence Day; Labor Day; Columbus Day; Veterans’s Day; Thanksgiving Day; and Christmas Day.

“**NYS Vendor ID**” is a unique ten character identifier issued by the NYS Office of the State Comptroller (OSC) when the vendor is registered on the Vendor File System.

**OPRG (E):** The acronym "OPRG (E)" shall be used as a designation for Oxygenated fuels Program Reformulated Gasoline Ethanol.

**Oxygenated Reformulated Gasoline (OPRG {E}):** shall be a blend consisting of gasoline-alcohol, in a reformulated gasoline which is intended for use in an Oxygenated fuels Program Reformulated Gasoline control area during a program control period (i.e., 6NYCRR225.-3.4, Table 1 on page 140.2m CN 8-31-93, or latest revision thereof).

“**Preferred Source Products**” shall refer to those Products that have been approved in accordance with New York State Finance Law § 162.

“**Preferred Source Program**” shall refer to the special social and economic goals set by New York State in State Finance Law § 162 that require a governmental entity purchase select Products from designated organizations when the Products meet the “form, function and utility” requirements of the governmental entity. Under State Finance Law § 163, purchases of Products from Preferred Sources are given the highest priority and are exempt from the competitive bidding requirements. The New York State Preferred Sources include: The Correctional Industries Program of the Department of Corrections and Community Supervision (“Corcraft”); New York State Preferred Source Program for People Who Are Blind (“NYSPSP”); and the New York State Industries for the Disabled (“NYSID”). These requirements apply to state agencies, political subdivisions and public benefit corporations (including most public authorities).

“**Posting Day**” and “**Posted Price**” shall refer to the actual OPIS day the prices are posted.

“**Procurement Services**” shall refer to a business unit of OGS, formerly known as New York State Procurement (“NYSPRO”) and Procurement Services Group (“PSG”).

**RBOB:** The acronym, "RBOB" shall be used as a designation for Reformulated gasoline Blendstock for Oxygenate Blending.

**RFG:** The acronym, "RFG" shall be used as a designation for ReFormulated Gasoline.

**RON:** The acronym, "RON" shall be used as a designation for Research Octane Number.

**RVP:** The acronym, “RVP” shall be used as a designation for Reid Vapor Pressure.

“**SDVOB**” shall refer to a NYS-certified Service-Disabled Veteran-Owned Business

“**Shall**” denotes the imperative in a Contract clause or specification. “Shall” is synonymous with “required”. See also “Must” and “May”.

**Solicitation** shall refer to this document, its appendices and attachments.

**TBA:** The acronym, “TBA” shall be used as a designation Tertiary Butyl Alcohol.

**TW:** Delivery by Tank Wagon of less than 5,500 gallons.

**Volume Discount:** shall refer to the Cents Per Gallon Discount for Orders 5,500 Gallons or Greater that a Bidder enters in Attachment 1 – Price Pages. If no Volume Discount is entered this will be calculated as

\$0.0000. In a situation where Bidders are tied, the volume discount will be used as a tie breaker to determine a winner.

### **1.12 Appendices and Attachments**

The following appendices and attachments, attached hereto, are hereby expressly made a part of this Solicitation as fully as if set forth at length herein.

Appendix A – Standard Clauses for NYS Contracts (October 2019)  
Appendix B – General Specifications (April 2016)  
Appendix C – Federal Emergency Management Agency Terms and Conditions

Attachment 1 – Pricing  
Attachment 2 – NYS Required Certifications  
Attachment 3 – Encouraging Use of NYS Businesses  
Attachment 4 – Insurance Requirements  
Attachment 5 – Bidder Information Questionnaire  
Attachment 6 – Bidder Submission Checklist  
Attachment 7 – Bidder Questions Form  
Attachment 8 – Report of Contract Usage  
Attachment 9 – Delivery Schedule – State Agencies  
Attachment 10 – Delivery Schedule Political Subdivisions, Local Governments, & Other Eligible Non-State Agencies  
Attachment 11 – Intent to Bid

### **1.13 Conflict of Terms**

Conflicts among the documents comprising this IFB shall be resolved in the following order of precedence:

1. Appendix A, Standard Clauses for New York State Contracts;
2. The Solicitation;
3. Appendix B, General Specifications;
4. All other appendices and attachments to the Solicitation;

### **1.14 NYS Comptroller Approval**

Pursuant to the Memorandum of Understanding (“MOU”) dated August 15, 2019 between the Offices of the New York State Governor Andrew M. Cuomo (“Executive”), New York State Comptroller Thomas P. DiNapoli (“OSC”), the State University of New York (“SUNY”), the State University of New York Construction Fund (“SUCF”), the City University of New York (“CUNY”), and the City University of New York Construction Fund (“CUCF”), procurement documents and contracts awarded under this Solicitation shall have no force and effect and the State bears no liability unless such procurement documents and contracts awarded under this Solicitation are approved by OSC or the pertinent pre-audit review period under the MOU has elapsed.

## **2. BIDDER QUALIFICATIONS**

Bidder is advised that the State’s intent in having the requirements listed below is to ensure that only qualified and reliable Contractors perform the work of the resulting Contract. Bidder shall have the burden of demonstrating to the satisfaction of Procurement Services that it can perform the work required. Procurement Services retains the right to request any additional information pertaining to the Bidder’s ability, qualifications, financial capacity, financial stability, and procedures used to accomplish all work under the resulting Contract as it deems necessary to ensure safe and satisfactory work. A Bidder shall meet the following qualifications:

EITHER 1a OR 1b:

1a. The Bidder must either own or operate a permanently established bulk storage plant with stationary tankage from which delivery of the applicable product(s) will be made.  
OR

1b. The Bidder must be an established refiner, distributor, or authorized dealer of a distributor, who owns and operates, or leases and operates a bulk storage plant with stationary tankage. A Bid from an authorized dealer of a distributor shall include a letter, agreement or certification executed by the distributor, stating that the Bidder is an authorized dealer of the distributor. The Bidder must also be registered as a distributor with the New York State Department of Taxation and Finance and/or be a licensed importer, transporter or terminal operator, if applicable.

AND ALL OF THE FOLLOWING:

2. The Bidder's or distributor's bulk storage plant(s) must have sufficient capacity and/or other facilities which, in the opinion of the Commissioner of General Services, shall protect the interests of the State. Such facilities are subject to inspection prior to award, and if found not to be compliant with these requirements, the Bid may be rejected.

"Sufficient" capacity refers to the ability to fulfill the obligations of any resultant contract with New York State. This cannot be quantified in gallons because sufficient capacity for a given Contractor may vary based on volume to be awarded to that Contractor.

3. The bulk storage plant must be located within a reasonable distance from the place or point to which deliveries are to be made by transport, within the guaranteed delivery period of 48 (forty-eight) hours.

A "reasonable distance" is the distance which allows a Bidder to be able to deliver fuel and provide service to an Authorized User within the required delivery and emergency delivery timeframes. This cannot be quantified in miles as some Bidders may have greater capabilities than others

4. The Bidder's source of supply is with a reputable oil refiner either directly or through the refiner's authorized distributor. Bidder should supply a letter, agreement or certification executed by the refiner or distributor that shows that the Bidder has an agreement with the refiner or distributor and will be supplied with sufficient quantities of the fuel type(s) referenced in this Solicitation to satisfy the Bidder's obligations for any resultant contract with the State. New York State reserves the right to request updated supplier certification at any time during the contract.

5. The Bidder's delivery trucks for fuel except motor transports, are equipped with meters to accurately measure the quantity of fuel. Tank wagon used for the delivery of fuel must have a meter with ticket printer, which will provide a printed receipt giving an accurate accounting of the amount of fuel delivered. Delivery ticket shall be locked in the printer from the start of delivery until the delivery is completed and recorded.

6. Vendors furnishing fuel to New York State must be registered in accordance with applicable provisions of the New York State Tax Law amendments effective September 1, 1998 or as may be amended. Also, if Bidders intend to supply clear fuel, they must possess a valid IRS Form 637UV.

7. Bidder must maintain service facilities and have trained personnel qualified to service the product furnished at the Authorized User's location within 48 hours.

8. A Bidder must certify its commitment to obtain all necessary proof of insurance with its bid via Attachment 5 – Bidder Information Questionnaire. See Attachment 4 – Insurance Requirements for detailed insurance requirements.

Additional information that may be requested from the Bidder includes, but is not limited to, the following:

- Satisfactory evidence that a Bidder has maintained an organization capable of performing the work specified herein, if requested, through submission of a Dun & Bradstreet Business Information Report or other equivalent evidence.
- Evidence of business establishment with adequate inventories of the product(s) offered, and capacity to process and ship large orders to the awarded Region(s). The Commissioner may require a certificate from the Bidder showing the number of years the Bidder has been active in supplying the product(s) offered and the size and location of the inventories regularly maintained.
- References that demonstrate the ability of the Bidder to perform jobs similar in scope to the size, nature and complexity of the applicable Lot/County.
- Documentation to demonstrate a Bidder's ability to service the county(ies) on which they bid in order to meet the delivery requirements set forth in Section 6.12 *Product Delivery*.

Note: Failure by a Bidder to provide any of the above information as requested by OGS or to meet any of the above qualifications in whole or in part may result in disqualification of Bidder or a rejection of that Bidder's bid. **For this solicitation, a complete Intent to Bid should be submitted on or before the date and time indicated in the Key Events/Dates section and must be submitted prior to the Bid Opening Date.** Failure to submit an Intent to Bid on or before the date and time indicated in the Key Events/Dates section or a complete Intent to Bid may result in your company's bid being disqualified from an award. Please refer to Section 1.5, Intent to Bid.

### 3. SPECIFICATIONS

#### 3.1 Product Requirements

By submitting a bid, the Bidder guarantees that the product(s) supplied will meet or exceed the minimum specifications listed in Section 3 –Specifications.

#### 3.2 Fill and Vent Requirements/Vapor Recovery Systems

Agencies must ensure that fill and vent equipment meets NYS Standards. Contractors have the responsibility for reporting faulty or non-compliant equipment to the end users and the appropriate NYS regulatory agencies. The Authorized User shall be responsible for having the proper fuel transfer vapor recovery system(s) operating on their storage tank in accordance with 6NYCRR Subpart 230. The transfers include delivery tank(er) to purchaser storage tank (Stage I) and purchaser storage tank to vehicle tank (Stage II) systems. The contractor shall properly use and operate fuel vapor recovery system and equipment whenever it is present on a purchaser's tank. The contractor must utilize the equipment if present regardless of whether regulations required it due to location and throughput thresholds.

NYS DOT supports the collection of vapors during transfer to prevent emissions and the use of controls whenever present. The Fire Code of New York State at Section 2205.1.3 requires that where tanks are equipped with any type of vapor recovery system, all connections required for the safe and proper functioning of the particular vapor recovery process shall be made.

#### 3.3 Petroleum Transfer Requirements

It is the responsibility of the contractor to conduct deliveries in accordance with petroleum bulk storage (PBS) regulations including but not limited to 6 NYCRR part 613. An additional clarification is needed to specifically note that this will require compliance with unloading/loading provisions of the U.S. Hazardous Material Transportation Standards at 49 CFR part 177.8434as well as the obligation to report spills to the NYSDEC spills hotline and other provisions of the PBS regulation. The requirements of 49 CFR Part 177.843 specify that the transporter must ensure that the cargo tank truck is attended at all times during unloading by a "qualified person." A person is "qualified" if he/she has been made aware of the nature of the hazardous material which is to be loaded or unloaded, he/she has been instructed on the procedures to be followed in emergencies, he/she is authorized to move the tank truck, and has the means to do so. The transporter qualified person is considered to be attending the unloading operations if, throughout the process, he/she is alert and is within 25

feet of the tank truck .and must have an unobstructed view of the tank truck and delivery hose to the maximum extent practicable during the unloading operation.

**NOTE:**

Bidder's delivery trucks SHALL BE EQUIPPED WITH CALIBRATED METERS with the exception of motor transport, to accurately measure quantities delivered. All deliveries must be accompanied by a Delivery Ticket showing Brand or Grade and Number of Gallons Delivered. Agencies may examine, upon request, a copy of the metered ticket showing gallons loaded into the vehicle making delivery.

Supplementing §31 *Product Delivery* and § 32 *Weekend and Holiday Deliveries*, of Appendix B, General Specifications, orders will call for delivery within a specified number of days after date of order. As much time as possible should be allowed to the contractor (with consideration for the stipulated guaranteed delivery) for making deliveries; however, the contractor shall be in a position to make bulk deliveries within 48 hours after receipt of order.

Contractor must be prepared, at all times, to make prompt delivery as ordered. In State declared emergencies, fuel must be delivered within eight (8) to twelve (12) hours of notification. Contractors must be prepared to deliver in a timely manner, on a one-time basis per Agency tank, that amount of fuel necessary to fill subject tanks for the purpose of tank testing conducted by OGS at various locations providing minimum order requirements are met. (See Section 6.10 "MINIMUM ORDER").

Normal deliveries are considered to be Monday thru Friday. Saturday/Sunday deliveries are to be made on an emergency basis (and not a regular basis) ONLY.

Contractor's fuel delivery trucks shall be equipped with tight fill connections for those facilities with compatible appurtenances. On any tanks installed through the OGS Tank Modification Program, a 2-inch dry disconnect female fitting shall be required for the contractor to connect to the fill port.

Deliveries shall be made in accordance with petroleum bulk storage regulations including but not limited to 6 NYCRR Part 613, or latest revisions thereof.

Agencies shall be responsible to ensure that tanks are accessible by the contractor, and it is strongly advised that an agency representative be present during the delivery.

Agencies are responsible for the implementation of monitoring programs to insure compliance by gasoline suppliers with the specification requirements as outlined herein and in CL-804 dated July 7, 2014.

### **3.4 Topping Off Tanks**

Agency requests to top-off tanks for testing purposes must be honored as described elsewhere herein. The requesting agency may be required to sign a waiver of liability and responsibility on behalf of the Contractor.

Bidder must maintain service facilities and have trained personnel qualified to service the product furnished at the using agency within 48 hours.

### **3.5 Trade Names**

For convenience of ordering, delivering and servicing gasoline and E-85 under the contract, Bidder shall state the trade name for the gasoline offered under each type in Attachment 5 – Bidder Information Questionnaire. Such trade name, however, shall not in any way set aside the requirement of compliance with specifications.

### **3.6 Automatic Replenishment**

Requests for automatic replenishment are preferred in WRITING from an Authorized User, and may be required by the Contractor. Subsequent WRITTEN notification back from the Contractor, will establish automatic replenishment for tanks equal to or larger than 1,000 gallons.



Automatic replenishment for tank capacities less than 1,000 gallons will be at the Contractor’s option. If an Authorized User has not received written notification for automatic replenishment from the Contractor, a minimum order charge may apply (see Section 6.10 Minimum Order).

Determination for total gross tank capacity shall include all manifolded tanks.

If the Contractor, after having accepted the request from an Authorized User and provided written notification back to the Authorized User for automatic replenishment, permits the level of the fuel to fall below the percentages of the total capacity of the purchaser’s tank or tanks indicated in the following table, the purchaser shall have the right to purchase sufficient fuel on the open market to fill such tank or tanks and to charge any increase in price paid over the current contract price to the account of the Contractor.

MINIMUM LEVEL	TOTAL TANK CAPACITY/GALS
10%	500 TO 5,500
15%	5,501 – AND OVER

The minimum order size of 500 gallons stipulated in Section 6.10 Minimum Order shall not apply to deliveries being made to Authorized Users on an automatic delivery schedule as the contractor controls the frequency, delivery dates, and quantities of the deliveries being made.

**3.7 Requirements - Gasoline, Unleaded Formula (Conventional & OPRG (E) Types)**

The gasoline/s provided shall be volatile hydrocarbon fuels, free from water, suspended matter, and shall conform to ASTM Standard D4814-18 and its annexes, appendixes, or latest revision/s thereof.

**3.8 Octane Requirements - Unleaded Formula (Conventional, OPRG (E) & E-85 Types)**

The Octanes specified herein shall be provided throughout the calendar year regardless of monthly climate changes and shall be determined by:

	<u>RON + MON :</u>	
	2	
<u>Engine grade/application requirement</u>	<u>MON (minimum)</u>	<u>(RON + MON)/2 (minimum)</u>
Regular grade unleaded gasoline: (REG)	82	87
Mid-range grade unleaded gasoline: (MID)	82	89
Premium grade unleaded gasoline: (PREM)	82	91
E-85		96

**3.9 Gasoline Volatility Class (Conventional & OPRG (E) Types)**

All gasoline shall comply with Federal regulation, U.S. EPA, Clean Air Act (CAA) - 1990, Title 40 of Code of Federal Regulations (40CFR) and New York State regulations [6NYCRR, Subpart 225-3.3] for Reid Vapor Pressure and Volatility Class [as defined under ASTM D4814-18, Tables 1 and 2 and Seasonal Volatility Classes, as per Table 4], or latest amendment thereof, at its seasonal time of delivery.

**3.10 General Requirements, Unleaded Formula (Conventional & OPRG (E) Types)**

All fuel supplied under this contract shall be provided in full accordance with New York Code of Rules and Regulations (NYCRR), Title 6 Environmental Conservation Law, Chapter III Air Resources, Subchapter A, Part 225, (Statutory Authority: New York State Law, Article 19, Title 3, Section 19-0301, NYS Dept. of Environmental Conservation); Agriculture. & Markets. 1NYCRR, Part 224; and meet/exceed the requirements of Title 40 of the Code of Federal Regulations (40 CFR) Sections 40CFR52 through 40CFR86. **This requirement includes the providing of appropriate records at the time of gasoline delivery.**

Contractors must keep all records pertaining to this contract, including delivery tickets, purchase orders etc., for the year of the transaction and for six years thereafter. Vendors must also provide a copy of the written certifications to the agency representative at the time of order or purchase for Reid Vapor pressure, fuel content. Volatility classes as defined under ASTM D4814-18, Tables 1, 2, and 4, and quality, etc. or latest version thereof, which they must receive from their refiner or distributor pursuant to 1 NYCRR Part 224.

### **3.11 Limits, Unleaded Gasoline (All Types)**

The maximum ethanol content shall be ten (10%) percent by volume [equivalent to three and seven tenths (3.7%) percent oxygen by weight]. To be considered for a one (1 psi) pound per square inch increase in Reid vapor pressure, the gasoline/s must have a nine (9%) to ten (10%) percent ethanol content by volume and the Bidder must provide copies of the State, NYS/DEC, approval/s when the State's requirement is stricter.

### **3.12 General Requirements, Unleaded Gasoline OPRG (E)**

OPRG (E) gasolines shall be manufactured by EPA registered producer or supplied via a registered importer. Additionally, all OPRG (E) gasoline supplied under this Solicitation's contracts shall be certified under 40\CFR Section 80.40 to meet the standards and requirements prescribed within Section 80.41. Additive packages for OPRG (E) gasoline shall comply with the standards and be certified on a stand-alone basis. Contractor shall provide documentation confirming registration and certification details for each OPRG (E) gasoline at the Bid opening, or as the registered, certified, fuels become available within EPA guidelines.

If a Contractor/Bidder cannot document registration & certification requirements, then the State reserves the right to consider the next ranking Bidder qualified to supply the OPRG (E) type for period of supply that is required. When an existing certification is found by EPA to be non-conforming product, then the EPA reserves the right to revoke that certification. If a certification is revoked the contractor shall immediately discontinue use of that OPRG (E) gasoline and notify the NYS OGS purchasing officer. Documentation for a replacement formulation shall also be provided to OGS. If certification is not provided, OGS will act to ensure a replacement formulation via another contractor within the terms of this Solicitation.

Additionally, when the Bidder is supplying only OPRG (E) gasoline for an area which is designated as requiring only conventional gasoline, then the State reserves the right to consider the next ranked Bidder that is qualified/offering to supply the conventional gasoline to that area for the balance of the period of supply that is required.

### **3.13 Reformulated Gasoline, OPRG Type for the NYC-CMSA Requirements**

Gasoline, OPRG Type Reformulated (Alcohol/Ether/Oxygenated Blends)

This section of the detailed specification shall describe the Oxygenated fuels Program Reformulated (OPRG) Gasolines including the following: gasoline-alcohol, gasoline-ether, and gasoline-oxygenate blend(s) (of fuel(s), or combination blends thereof which are formulated for use in the New York City CMSA, or other designated [severe non-attainment] MSA's (if any). These blends SHALL NOT be supplied or offered for the conventional or reformulated gasoline specified elsewhere herein, except as superseded by Federal & State regulation. Its use shall be limited to the counties specified hereinafter. ASTM Test Method D4815-15b, or latest version thereof shall be used to determine ether and oxygenate content of the fuel, until it is replaced or updated by the U.S. EPA test method (i.e., final rule action).

Alcohol-ether-blend/oxygenated OPRG gasoline shall meet or exceed the requirements stated previously herein for Conventional Unleaded Formula Gasoline and its own specific requirements as stated hereinafter.

**3.14 Distribution, Gasoline, OPRG Type Reformulated (Alcohol/Ether/Oxygenated Blends)**

Per Federal and State regulation, oxygenated (OPRG) gasoline shall be provided in the New York City Consolidated Metropolitan Statistical Area (New York City CMSA), and all other non-attainment area(s) that Filed Requirements for OPRG (E), if applicable.

As of the closing of filed requirements, these control/distribution areas shall include the following counties:  
New York City CMSA and other non-attainment area(s):

- Bronx
- Dutchess
- Kings
- Nassau
- New York
- Orange
- Putnam
- Queens
- Richmond
- Rockland
- Suffolk
- Westchester

The control/distribution areas serviced by this Solicitation/specification shall be amended as required to comply with the latest revision of Federal regulation, U.S. EPA, Clean Air Act (CAA) - 1990, Title 40 of Code of Federal Regulations (40CFR), or latest amendment thereof, and State regulation, NYCRR, Title 6, Chapter III, Subchapter A, Part 225; and Agriculture. & Markets. 1NYCRR, Part 224.

**3.15 OPRG (E) Type Gasoline, for the Ozone Non-Attainment Areas**

Terminology, Gasoline, OPRG (E) Type  
Product provided shall be in accordance with ASTM D4814-18, Section 3 Terminology, ASTM D4815-15b (when applicable), or latest version(s) thereof and as defined in Section 1.11 Definitions.

**3.16 Requirements, Gasoline, Type Reformulated**

This section of the detailed specification shall describe the OPRG (E) Gasolines which shall meet the emissions reduction for 2000 and beyond using the applicable formula standard/s stated in 40\CFR Section 80.41.

OPRG (E) gasoline shall meet or exceed the requirements stated previously herein for Conventional & OPRG (E) Unleaded Gasoline and its own specific requirements as stated hereinafter.

However, the State reserves the right to adjust quantities and establish (adjust via contractual terms elsewhere within the specifications of this Solicitation) the pricing for these blends as they become available in the specified counties (or others).

The control/distribution areas serviced by this Solicitation/specification shall be amended as required to comply with the latest revision of Federal regulation, U.S. EPA, Clean Air Act (CAA) - 1990, Title 40 of Code of Federal Regulations (40CFR), Part 80 Regulation of Fuels & Fuel Additives, Standards for OPRG(E) & Conventional Gasoline, (Final Rule), or latest amendment thereof; and State regulations: Title 6, NYCRR, Chapter III, Subchapter A, Part 225; and Agriculture. & Markets. 1NYCRR, Part 224

**3.17 Requirements – E-85 (Table)**

ASTM D5798-17 STANDARD SPECIFICATION FOR FUEL ETHANOL (E<sub>75</sub>-E<sub>85</sub>)  
FOR AUTOMOTIVE SPARK-IGNITION ENGINES

PROPERTY	VALUE FOR CLASS			TEST METHOD
ASTM volatility class*	1	2	3	N/A
Ethanol, plus higher alcohols (minimum, volume %)	79	74	70	ASTM D5501-12(2016)
Hydrocarbons (including denaturant)/ (volume %)	17-21	17-26	17-30	ASTM D4815-15b
Vapor pressure at 37.8°C kPa psi	38-59 5.5-8.5	48-65 7.0-9.5	66-83 9.5-12.0	ASTM D4953-15, D5191-15
Lead (maximum, mg/L)	2.6	2.6	3.9	ASTM D5059-14
Phosphorus (maximum, mg/L)	0.3	0.3	0.4	ASTM D3231-13
Sulfur (maximum, mg/kg)	210	260	300	ASTM D3120-08 (2014), D1266-13, D2622-16
Methanol (maximum, volume %)		0.5		N/A
Higher aliphatic alcohols, C3-C8 (max., volume %)		2		N/A
Water (maximum, mass %)		1.0		ASTM E203-16
Acidity as acetic acid (maximum, mg/kg)		50		ASTM D1613-17
Inorganic chloride (maximum, mg/kg)		1		ASTM D512-12, D2988-96 (2015)
Total chlorine as chlorides (maximum, mg/kg)		2		ASTM D4929-17
Gum, unwashed (maximum, mg/100 mL)		20		ASTM D381-12 (2017)
Gum, solvent-washed (maximum, mg/100 mL)		5.0		ASTM D381-12 (2017)
Copper (maximum, mg/L)		0.07		ASTM D1688-17
Appearance  N/A = Not applicable	Product shall be visibly free of suspended or precipitated contaminants (shall be clear and bright).			Appearance determined at ambient temperature or 21°C (70°F), whichever is higher.
Octane (R+M)/2	Minimum of 96 for E-85			

\*For seasonal and geographic volatility specifications for E-85 reference specification ASTM D5798-17, or latest version thereof.

**3.18 Related Requirements for Storage, Transfer, & Wholesale Purchaser-Consumer Posting**

Tanks/S (Storage), Gasoline-Alcohol Blend

The storage tank(s) for gasoline-alcohol blend fuel shall be clean the first time this blend of fuel is placed in the tank. The tank shall be new or cleaned [all water and precipitated-accumulated material (i.e., dyes, lacquers, varnishes, gums, etc.) shall be removed from the tank]. This tank cleaning shall be provided in full compliance with 1NYCRR, Subpart 224.8.

### **3.19 Labels**

The contractor shall provide fuel content labels/signs for each pumping station.

These labels shall identify significant amounts of alcohols in the fuel and satisfy the requirements of 1NYCRR, Part 224 and 6NYCRR, Part 225. An environmental awareness decal/label shall be provided and displayed on each affected pump.

## **4. BID SUBMISSION**

### **4.1 Performance and Bid Bonds**

There are no bonds for this Contract. The Commissioner of OGS has determined that no performance, payment or Bid bond, or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Contract is required at any time during the term of the resulting Contract.

### **4.2 NYS Vendor File Registration**

Prior to being awarded a Contract pursuant to this Solicitation, the Bidder and any authorized resellers who accept payment directly from the State, must be registered in the New York State Vendor File (Vendor File) administered by the Office of the State Comptroller (OSC). This is a central registry for all vendors who do business with New York State Agencies and the registration must be initiated by a State Agency. Following the initial registration, a unique New York State ten-digit vendor identification number (Vendor ID) will be assigned to your company and to each of your authorized resellers (if any) for use on all future transactions with New York State. Additionally, the Vendor File enables a vendor to use the Vendor Self-Service application to manage all vendor information in one central location for all transactions related to the State of New York.

If Bidder is already registered in the New York State Vendor File, the Bidder must enter its Vendor ID on the first page of this Solicitation. Authorized resellers already registered should list the Vendor ID number along with the authorized reseller information. (The Vendor ID number It is not the same as a SOCIAL SECURITY NUMBER or a TIN/FEIN number.)

If the Bidder is not currently registered in the Vendor File, the Bidder must request assignment of a Vendor ID from OGS. Bidder must complete the OSC Substitute W-9 Form ([http://www.osc.state.ny.us/vendors/forms/ac3237s\\_fe.pdf](http://www.osc.state.ny.us/vendors/forms/ac3237s_fe.pdf)) and submit the form to OGS in advance of Bid submission. Please send this document to the Designated Contact identified in the Solicitation. In addition, if an authorized reseller is to be used that does not have a Vendor ID, an OSC Substitute W-9 form should be completed by each authorized reseller and submitted to OGS. OGS will initiate the vendor registration process for all Bidders and authorized resellers. Once the process is initiated, registrants will receive an e-mail identifying their Vendor ID and instructions on how to enroll in the online Vendor Self-Service application.

For more information on the Vendor File please visit the following website: <https://osc.state.ny.us/vendors/>

### **4.3 Format of Bid Submission**

The complete Bid package must be received by OGS Procurement Services by the date and time of the Bid opening. Late Bids shall be handled in accordance with Appendix B, Late Bids. Any Bid pricing or portions thereof submitted on USB flash drive that are incomplete or that cannot be opened/accessed may be rejected. With respect to any Bid documents in Excel format, only those cells provided for entering Bid pricing and information are to be accessed by the Bidder. Situations susceptible to Disqualification may include: • E-mail or facsimile Bid submissions are not acceptable, and • Absent Price Pages (Attachment 1 - Pricing) are not acceptable.

It is recommended that the Bidder open, review and save/download all electronic files to the Bidder's hard drive and/or to a secure back-up location. Only completed files (in the specified format) should be saved to a flash drive for submittal.

Bidders are responsible for the accuracy of their Bids. All Bidders are directed to take extreme care in developing their Bids. Bidders are cautioned to carefully review the documents being submitted prior to submittal as well as the prices being quoted. A Bid that fails to conform to the requirements of the Solicitation may be considered non-responsive and may be rejected.

#### **4.4 Content of Bid Submission**

A complete Bid consists of the following:

1. Two (2) USB flash drives containing:
  - a. Pages 1 and 2 of the Solicitation (signed and scanned) (PDF);
  - b. Completed Attachment 1 – Pricing (must be submitted as an Excel file);
  - c. Completed Attachment 2 – NYS Required Certifications with original ink signatures (PDF);
  - d. Completed Attachment 3 – Encouraging Use of NYS Businesses (PDF);
  - e. Proof of compliance with Attachment 4 – Insurance Requirements (PDF);
  - f. Completed Attachment 5 – Bidder Information Questionnaire (Excel);
  - g. Completed Attachment 6 – Bidder Submission Checklist (Excel);
  - h. Completed ST-220CA, Contractor Certification, notarized with original ink signatures (PDF);
  - i.
  - j. Completed Form EEO100, Equal Employment Opportunity Staffing Plan (PDF);
  - k. Standard Vendor Responsibility Questionnaire (completed and scanned to PDF) or Certification that Questionnaire has been completed online (PDF);
  - l. A Supplier letter or certification from the refiner or distributor that shows Bidder has an agreement with refiner or distributor and will be provided sufficient fuel to meet contractual volume. (PDF)
  - m. Completed Appendix C – Federal Funding Agency Mandatory Terms and Conditions, (section 10) (PDF)
  
2. Original paper versions of each of the following (to be placed in a loose-leaf binder and tabbed):
  - a. Pages 1 and 2 of the Solicitation with original ink signatures;
  - b. Completed Attachment 2 – NYS Required Certifications with original ink signatures;
  - c. Completed Attachment 3 – Encouraging Use of NYS Businesses;
  - d. Proof of compliance with Attachment 4 – Insurance Requirements;
  - e. Completed Attachment 5 – Bidder Information Questionnaire;
  - f. Completed Attachment 6 – Bidder Submission Checklist;
  - g. Completed ST-220CA, Contractor Certification, notarized with original ink signatures;
  - h.
  - i. Completed Form EEO100, Equal Employment Opportunity Staffing Plan;
  - j. Standard Vendor Responsibility Questionnaire (completed and signed) or Certification that Questionnaire has been completed online;
  - k. A Supplier letter or certification from the refiner or distributor that shows Bidder has an agreement with refiner or distributor and will be provided sufficient fuel to meet contractual volume;
  - l. Completed Appendix C – Federal Funding Agency Mandatory Terms and Conditions, (section 10) (PDF)

Also, please note that in the case of discrepancies between paper copies and CD or flash drive submissions of the documents required in both formats, the electronic (CD or flash drive) copy shall take precedence over the paper copy.

A Bidder should note that any indicators or messages that have been built into the attachments are informational only and provided solely for the purpose of assisting Bidders in completing the attachments. The presence or absence of notes or indicators is not a determination by the State as to the sufficiency of the attachments with respect to the Solicitation requirements. Bidders remain responsible for reviewing the attachments to ensure compliance with the Solicitation requirements.

**4.5 Attachment 1 Price Page Instructions**

A Bidder must enter a Price Per Gallon for all Conventional or OPRG (E) gasoline items within a County they bid on in order to be considered for an award for gasoline. A separate bid price for E-85 is required in order to be considered for an E-85 award in that county. A Bidder may also enter a Volume Discount in Cents Per Gallon (for orders 5,500 gallons or greater). If a Bidder does not specify a Volume Discount, a discount of \$0.0000 will be assumed. Any Volume Discount offered by a Bidder will not factor into the cost evaluation, however it may be used to determine a winner in case of a tie Bid.

The Grand Total Bid per County tab will auto-populate for each County that is bid.

For all Counties that a Bidder elects to bid, a Bidder must specify the following:

Column Title	Price Per Gallon	Volume Discount (for orders 5,500 gallons or greater)
Description	Specify the Price Per Gallon for each type of fuel requested	Specify the Cents Per Gallon Discount for Orders 5,500 Gallons or Greater (if this is not specified by a Bidder, this will be calculated as \$0.0000)

**1. Price Sheet Details**

Attachment 1 – Pricing will limit the number of decimal places that a Bidder can enter (or bid) in the cells to four (4) decimal places. The Total Price is calculated by multiplying the estimated annual volume by the Bidder’s bid price per gallon and is rounded to two (2) decimal places.

Attachment 1 -Pricing will calculate a Grand Total Bid Per County for each county bid by summing the Total Prices for all Conventional or OPRG (E) gasoline items in that county. The Grand Total Bid Per County for Flex Fuel (E-85) is the same as the Flex Fuel (E-85) Total Price for that county.

**2. Volume Discount**

A Bidder may provide a Volume Discount for a given item on all individual orders of 5,500 gallons or greater in Attachment 1 – Pricing. The Volume Discount will not be used in the evaluation but may be used by OGS as a tie breaker if needed. The Bidder offering the Volume Discount that is the most advantageous (greatest discount by estimated volume) to the State will win the tie breaker and be awarded the item(s) in that county.

Upon Contract award, the Volume Discount for each item shall be applied to the invoice for each individual order placed by an Authorized User for an item which results in a single delivery of 5,500 gallons or greater.

**4.6 Bid Envelopes and Packages**

All Bids should have a label on the outside of the envelope or package itemizing the following information:

1. BID ENCLOSED (preferably bold, large print, all capital letters)
2. Solicitation number #23237
3. Bid Opening Date and Time
4. The number of boxes or packages (e.g., 1 of 2; 2 of 2)

Failure to complete all information on the Bid envelope and/or package may necessitate the opening of the Bid prior to the scheduled Bid opening.

#### 4.7 Bid Delivery

Bids shall be delivered to the following address on or before 11:00 a.m. ET, on or before the Bid opening date as stated in Section 1.4 – Key Events/Dates:

State of New York Executive Department  
Office of General Services  
Procurement Services  
Corning Tower - 38th Floor Reception Desk  
Empire State Plaza  
Albany, NY 12242

Bidder assumes all risks for timely, properly submitted deliveries. The time of Bid receipt is determined by OGS according to the clock at the above-noted location. A Bidder is strongly encouraged to arrange for delivery of Bids to OGS prior to the date of the Bid opening. Late Bids shall be rejected, except as provided in Appendix B, Late Bids. All Bids and accompanying documentation shall become the property of the State of New York and shall not be returned.

#### 4.8 Important Building Access Procedures

~~Due to COVID-19, Bids cannot be hand delivered by the Bidder, but must be delivered by common carrier (e.g. USPS, UPS, FedEx, or DHL). Bidder assumes all risks for timely, properly submitted deliveries. The time of Bid receipt is determined by OGS according to the clock at the above-noted location. A Bidder is strongly encouraged to arrange for delivery of Bids to OGS prior to the date of the Bid opening. Late Bids shall be rejected, except as provided in Appendix B, Late Bids. All Bids and accompanying documentation shall become the property of the State of New York and shall not be returned.~~

To access the Corning Tower, all visitors must check in by presenting photo identification at the information desk. Delays may occur due to a high volume of visitors. Visitors conducting Procurement Services business are encouraged to pre-register for building access by contacting the Procurement Services receptionist at (518) 474-6262 at least 24 hours prior to the visit. Visitors who are not pre-registered will be directed to a designated phone to call the Procurement Services receptionist. The receptionist will register the visitor at that time but delays may occur. Building access procedures may change or be modified at any time.

#### 4.9 NYS Required Certifications

A Bidder is required to submit the signed New York State Required Certifications (Attachment 2 – NYS Required Certifications) with its Bid.

#### 4.10 Supplier Certificate

Bids will be accepted only from established refiners, distributors or authorized dealers. The Bidder's submission of the Supplier's letter or certification from the refiner or distributor guarantees that the Bidder is an authorized dealer or distributor of the Supplier, and the Supplier has agreed to supply the Bidder with all quantities of Products required by the Bidder in fulfillment of its obligation under any resultant Contract with the State.

The Commissioner reserves the right to investigate or make any inquiry into the capabilities of any Bidder to properly perform under any resultant Contract.

#### 4.11 Bid Deviations

Bids must conform to the terms set forth in the Solicitation. As set forth in Section 1.8 Bidder Questions, if Bidder intends to submit a Bid that deviates from the requirements of the Solicitation in any way, the proposed deviations should be submitted during the Questions period so that they may be given due consideration prior to the submission of Bids. A Bidder should note that all clarifications and exceptions including those relating to the Solicitation and resulting Contract are to be resolved prior to the Bid Opening. Material deviations (including



additional, inconsistent, conflicting, or alternative terms) submitted with the Bid may render the Bid non-responsive and may result in rejection of the Bid.

Bidder is advised that OGS will not entertain any exceptions to Appendix A (Standard Clauses for New York State Contracts). OGS will also not entertain exceptions to the Solicitation or Appendix B (General Specifications) or Appendix C (Federal Funding Agency Mandatory Terms and Conditions) that are of a material and substantive nature.

Extraneous terms submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, license agreements, contracts or other documents) that are attached or referenced with submissions shall not be considered part of the Bid or resulting Contract, but shall be deemed included for informational or promotional purposes only.

#### **4.12 Bid Opening Results**

OGS Procurement Services posts Bid information on the OGS Procurement Services website. The Bid Opening Results webpage makes available the list of bidders that responded to the Solicitation. Such information is anticipated to be available online within two business days after the Bid opening.

The Bid Opening Results Page is available at: <https://ogs.ny.gov/procurement/bid-opening-results-0>.

#### **4.13 Bid Liability**

The State of New York will not be held liable for any cost incurred by the Contractor for work performed in the production of a Bid or for any work performed prior to the formal execution of a Contract.

#### **4.14 Firm Offer**

Bids must remain an effective offer, firm and irrevocable, for at least 90 calendar days from the due date, unless the time for awarding the Contract is extended by mutual consent of OGS and the Bidder. A Bid shall continue to remain an effective offer, firm and irrevocable, subsequent to such 90 calendar-day period until either tentative award of the Contract by OGS is made or withdrawal of the Bid in writing by the Bidder.

#### **4.15 NYS Reserved Rights**

New York State reserves the right, in its sole discretion, to:

- A. Reject any or all Bids received in response to the Solicitation;
- B. Withdraw the Solicitation at any time at the sole discretion of the State;
- C. Make an award under the Solicitation in whole or in part;
- D. Disqualify any Bidder whose conduct and/or Bid fails to conform to the requirements of the Solicitation;
- E. Seek clarifications and revisions of the Bid;
- F. Amend the Solicitation prior to the Bid opening to correct errors or oversights, or to supply additional information as it becomes available;
- G. Direct Bidders, prior to the Bid opening, to submit Bid modifications addressing subsequent Solicitation amendments;
- H. Change any of the schedule dates with notification through the NYS Contract Reporter;
- I. Eliminate any mandatory, non-material requirements that cannot be complied with by all of the prospective Bidders;
- J. Waive any requirements that are not material;
- K. Utilize any and all ideas submitted in the Bids received;
- L. Adopt all or any part of a Bidder's Bid in selecting the optimum configuration;
- M. Negotiate with a Bidder within the Solicitation requirements to serve the best interests of the State. This includes requesting clarifications of any or all Bids;
- N. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Bidder's Bid and/or to determine a Bidder's compliance with the requirements of the Solicitation;

- O. Select and award the Contract to other than the selected Bidder in the event of unsuccessful negotiations or in other specified circumstances as detailed in the Solicitation;
- P. Accept and consider for Contract Award Bids with non-material Bid Deviations or non-material Bid defects such as errors, technicalities, irregularities, or omissions;
- Q. Use any information which OGS obtains or receives from any source and determines relevant, in OGS's sole discretion, for the purposes of bid evaluation and Contractor selection;
- R. Consider a proper alternative where an evidently incorrect reference/parameter/component/product/model/code number is stated by the State or the Bidder;
- S. Reject an obviously unbalanced Bid as determined by the State; and
- T. Conduct Contract negotiations with the next responsible Bidder, should the Agency be unsuccessful in negotiating with the selected Bidder;
- U. Make no award for any Product, region, or lot, as applicable, for reasons including, but not limited to, unbalanced, unrealistic or excessive Bidder pricing, a change in Authorized User requirements and/or Products, or an error in the Solicitation (e.g., use of incorrect reference, pack size, description, etc.). In such case, evaluation and ranking of Bids may be made on the remaining Products, regions, or lots;
- V. Offer a Bidder the opportunity to provide supplemental information or clarify its Bid, including the opportunity to explain or justify the balance, realism, and/or reasonableness of its pricing;
- W. Award Contracts on a rolling or staggered start basis, either in whole or in part. Contracts awarded in this method shall be coterminous with the first Contract awarded as a result of this Solicitation;
- X. Conduct pre-award meetings with individual Bidders to determine their capability of meeting any of the requirements of the Solicitation specifications;
- Y. Investigate or make any inquiry into the capacity of any Bidder to properly perform under any resultant Contract Award, and subsequently during the duration of the contract term;

#### **4.16 Incorporation**

Portions of the successful Bidder's Bid and of this Solicitation shall be incorporated into a final Contract, with a separate document executed by Contractor and OGS. A final Contract will be formalized either through a separate contract document or through a contract award letter incorporating the Bid, each having its own provision governing conflict of terms.

### **5. METHOD OF AWARD**

#### **5.1 Method of Award**

It is the intent of this Solicitation to make one (1) award for all gasoline fuels and one (1) award for E-85 fuel in each of the sixty (60) counties included in the delivery schedules, where applicable.

Award shall be made by Grand Total Bid per County to the lowest responsive and responsible Bidder for all conventional and OPRG (E) items within each county. Bidder must bid all conventional or OPRG (E) items listed within a county with requirements to be considered to have a complete bid for that county.

If no complete Bids are received for a county, the State reserves the right to make a partial award for specific items within the county to the lowest responsible Bidder for a specific Item.

A separate bid price for E-85 is required for an E-85 award within that county.

Only timely bids or those deemed by the Commissioner to be eligible in accordance with Appendix B, clause 5. *Late Bids* subsection (iii), will be considered in the awarding of a contract, except where there are no complete bids for a county, and in that case in accordance with Appendix B, 5. *Late Bids* subsections (i) & (ii) if no partial bids within a county may be considered.

Order of Award Ability:

1. Timely complete bids for a county or deemed accepted in accordance with Appendix B 5. *Late Bids* subsection (iii)
2. Partial bids within a county where there are no bids

3. Late Bids where there are no complete county or partial county bids in accordance with Appendix B 5. Late Bids subsection (i) & (ii)

Additionally, in order to attempt to ensure an adequate supply of Gasoline during the contract period, the State reserves the right at its sole option and discretion to limit the number of items and/or total gallons awarded to any one bidder on requirements in one county or combination of counties included in this Solicitation.

### **5.1.1 Evaluation Process**

#### **Financial Evaluation**

A Bidder's pricing must be presented in Attachment 1 – Pricing, as directed in Section 4.5 – Attachment 1 Price Page Instructions, to enable the evaluation of pricing according to the State's prescribed formula. "Grand Total Bid Per County" is computed in Attachment 1.

All pricing recommended for award will be subject to comparison to the previous year's pricing and/or current market trends, as applicable, in order to gauge the reasonableness of price. Pricing found not to be in line with current and historical trends or in the best interest of the State, may be removed from consideration for an Award.

#### **Administrative Evaluation**

After the financial evaluation, each bid in line for an award will be screened for completeness and conformance as set forth in Section 4 Bid Submission of this Solicitation. Any bid not meeting these requirements may be deemed nonresponsive and denied further consideration for award.

Bids will be reviewed to ensure that the Bidder has responded to all questions in Attachment 5 – Bidder Information Questionnaire.

In the event that OGS removes a winning Bidder's Bid from consideration, either in whole or in part, OGS may elect to award to the next lowest Bidder at their lowest "Grand Total Bid Per County" bid price.

### **5.2 Notification of Award**

Tentative Contract award(s) shall consist of written notice to that effect by OGS to a selected Bidder, who shall execute a Contract upon a determination by OGS that the Bidder is responsive and responsible.

Non-awardees will also be notified that their Bid was not selected for award.

## **6. TERMS AND CONDITIONS**

### **6.1 Contract Term and Extensions**

The Contract term shall commence on December 17, 2021 or upon the date of OSC approval of the final executed documents pursuant to the MOU, whichever is later, and end on December 14, 2023.

All OGS Centralized Contracts resulting from this Solicitation shall have a co-terminus end date, including those Contracts awarded during any subsequent periodic recruitment. At the State's option, the Contract may be extended for three (3) years, in increments as deemed to be in the best interest of the State. Whether the optional extensions are exercised is at the sole discretion of the State. A Contractor shall retain the right to decline a Contract extension offered under this section. Any Contract extension will be under the same terms and conditions, subject to the approval of OSC and any additional applicable statutory and policy requirements. Any extensions provided under this section shall apply in addition to any rights set forth in Appendix B, Contract Term – Extension.

## 6.2 Short Term Extension

This section shall apply in addition to any rights set forth in Appendix B, §23 *Contract Term – Extension*. In the event a replacement Contract has not been issued, any Contract let and awarded hereunder by the State may be extended unilaterally by the State for an additional period of up to three (3) months upon notice to the Contractor with the same terms and conditions prevailing at the time of the extension. With the concurrence of the Contractor, the extension may be for a period of up to six (6) months in lieu of three (3) months. However, this extension automatically terminates should a replacement Contract be issued in the interim.

## 6.3 Price

Pricing will be collected using Attachment 1 – *Pricing* in accordance with the Instructions tab listed within Attachment 1

Prices quoted shall be billed net per gallon, F.O.B. Authorized User storage tanks, including all applicable customs, duties, taxes, including LUST, license fees and surcharges, and as designated by the ordering Authorized User. Bid prices must be expressed in U.S. currency and shall be submitted up to four (4) decimal places (priced in dollars per gallon).

Pricing for contract purchases shall be based on the pricing in effect at the time the Authorized User places the order. Authorized Users that are on automatic delivery, shall be priced on the day of delivery, unless the Authorized User requests a separate delivery from their automatic delivery schedule. The price shall then reflect the day of the order for the separate delivery.

It shall be the Contractor's responsibility to satisfy Authorized User requirements by furnishing blended product when called for during the time period indicated in the Solicitation.

Any special allowances should not be included in the Bid price as they cannot be considered in evaluating Bids. However, if the Bidder extends such allowances during the term of the Contract to Federal, State, Local Governments or to commercial users in the normal course of doing business, New York State requires that such allowances will also be available to the State in the maximum amount extended to others who contract to purchase fuel under similar contractual terms and conditions. Bid prices shall be firm except that price revisions shall be permitted in accordance with the PRICE REVISIONS clause and with respect to certain taxes and duties as follows:

**"After-imposed tax"** means any new or increased Federal, State and local excise tax or duty, except social security or other employment taxes, on fuel purchased under any contract to be awarded hereunder which the Contractor is required to pay or bear the burden of as the result of legislative, judicial, or administrative action taking effect after the date of contract award.

**"After-relieved tax"** means any amount of Federal, State and local excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on fuel purchased under any contract to be awarded hereunder which the Contractor is not required to pay or bear the burden of, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial or administrative action taking effect after the date of contract award.

The Bid price shall include all applicable customs, duties, taxes, license fees and surcharges as stated in Appendix B §8 *Taxes*.

**NOTE:** The State of New York and its political subdivisions are exempt from New York State and local sales taxes and federal excise taxes.

The price for fuel under any contract to be awarded hereunder shall be increased by the amount of any after-imposed tax, unless the legislative, judicial or administrative act says otherwise, if the Contractor states in writing that such contract price does not include any contingency for such after-imposed tax. Such increase shall be prospective only and becomes effective upon such written notice and on the effective date of the next scheduled price revision.

The price for fuel under any contract to be awarded hereunder shall be decreased by the amount of any after-relieved tax. Such decrease shall be effective when realized or by no later than the next scheduled price revision.

The contract price shall also be decreased by the amount of any excise tax or duty, except social security or other employment taxes that the Contractor is required to pay or bear the burden of or does not obtain a refund of through the Contractor's fault or negligence.

The Contractor shall promptly notify the Procurement Services Contract Management Specialist of all matters relating to any excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price for gasoline.

**6.4 Price Revisions**

Bid prices shall be firm except that price revisions will be permitted in accordance with the following procedure:

Revisions to the original contract price shall be based on prices published in the OPIS (OIL PRICE INFORMATION SERVICE) Weekly Published Newsletter as indicated in the chart below. The weekly average of the daily high and low prices shown in the publication for each of the three-conventional unleaded gasoline fuel types, RBOB, PreRBOB and Ethanol will be used to compute price revisions during the contract period.

Location in OPIS Newsletter	Fuel	Weekly Averages Spot Report location
Page 2 – In Cash Markets Northeast	Reg Unl	Linden Weekly Average
Page 2 – In Cash Markets Northeast	Mid Unl	Linden Weekly Average
Page 2 – In Cash Markets Northeast	Pre Unl	Linden Weekly Average
Page 2 – In Cash Markets Northeast	RBOB	NY Harbor Barge Weekly Average
Page 2 – In Cash Markets Northeast	Pre RBOB	NY Harbor Barge Weekly Average
Page 10 – Spot Market Prices	Ethanol	New York

Please note: base prices were calculated using the following methods using the information from OPIS (OIL PRICE INFORMATION SERVICE) Weekly Published Newsletter (August 30, 2021 Vol. 42, No. 35):

- Conventional gasoline base prices are the published Linden Weekly Averages.
- OPRG (E) Gas Regular base price is calculated by taking 90% of the RBOB value and adding it to 10% of the ethanol value.
- OPRG (E) Gas Mid Range base price is calculated by taking 90% of the average of RBOB and Pre RBOB and adding it to 10% of the ethanol value.
- OPRG (E) Gas Premium base price is calculated by taking 90% of Pre RBOB value and adding it to 10% of the ethanol value.
- E-85 base price is calculated by taking 15% of Conventional Gas Regular value and adding it to 85% of the ethanol value.

Procurement Services will compute any price revisions by determining the difference between the weekly average of the daily high and low prices (base prices) published in the Cash Markets – Weekly Average Spot Report on August 30, 2021 and the weekly average of the daily high and low prices published on Monday every week during the contract period beginning with the publication on December 20, 2021 or the publication immediately following the start date of the contract, whichever occurs first. This differential (adjustment) + or - will be added to the base bid prices. Applicable price changes will be effective as of the start of business on the Friday immediately preceding the day of publication. Generally, the weekly average published in OPIS represents a 5-day average of high and low prices; however, as holidays occur which would eliminate a given

daily range of prices, the weekly average may represent less than a 5-day average. Regardless of the number of days represented in the weekly average, the published weekly average will be utilized as the basis for price revisions. Final price shall be calculated by applying the above stated price revision to the base bid price.

The State reserves the right to change to a daily, bi-weekly or monthly schedule in price revisions if the market conditions so warrant.

Should postings become unavailable or differ from current description and/or format, a posting determined by the Commissioner of the Office of General Services in his/her sole discretion, to be most reflective of market conditions, will be used.

Corrections to posted prices previously published will be considered when caused by a typographical or clerical error on the part of said publisher.

The following clauses shall apply to all price adjustments under any contract awarded:

- (1) Price increases are limited to changes in pre-selected postings as noted above. Increases in contract costs or prices to compensate for other increases in the cost of doing business, regardless of where such cost increases are attributable, will not be allowed during the contract period.
- (2) The EPA has determined that gasoline sold in certain counties: Bronx, Dutchess, Essex (portion of), Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, and Westchester [in the New York City Consolidated Metropolitan Statistical Area (CMSA)], are subject to regulations mandating the use of OPRG(E) gasoline. Recognizing that pricing differentials occur on a regular basis; the State will incorporate the following methodology in the determination of the weekly price revision.

**EXAMPLE: METHODOLOGY FOR RBOB AND ETHANOL ADJUSTMENTS  
(OPRG (E) UNLEADED FUEL TYPES)**

Posted Date: (hypothetical) August 10, 2015  
**RBOB x .90 + Ethanol x .10 = Blended Average**

$$1.7082 \times .90 = 1.5373(8)$$

$$1.5620 \times .10 = 0.1562(0)$$

Blended Average  
 $1.5373 + .1562 = 1.6935$

Posted Date: (Hypothetical) December 21, 2015  
**RBOB x .90 + Ethanol x .10 = Blended Average**

$$1.7820 \times .90 = 1.6038(0)$$

$$1.1063 \times .10 = 0.1106(3)$$

Blended Average  
 $1.6038 + .1106 = 1.7144$

**ADJUSTMENT CALCULATION**

December 21, 2015 Blended Average ± August 10, 2015 Base Blended Average =  
Adjustment  
 $1.7144 - 1.6935 = +.0209^*$

\*This figure being a positive number will be added to the base Bid price. If the figure is a negative number, it would be subtracted from the base Bid price. For the OGS web based posted pricing this adjustment will be added or subtracted to the base Bid price.

**EXAMPLE: METHODOLOGY FOR E-85 ADJUSTMENTS**

Posted Date: (Hypothetical) August 10, 2015

**Regular Unleaded x .15 + Ethanol x .85 = Blended Average**

$1.6482 \times .15 = .2472(3)$

$1.5620 \times .85 = 1.3277(0)$

Blended Average

$.2472 + 1.3277 = 1.5749$

Posted Date: (Hypothetical) December 21, 2015

**Regular Unleaded x .15 + Ethanol x .85 = Blended Average**

$1.8844 \times .15 = .2826(6)$

$1.1063 \times .85 = .9403(5)$

Blended Average

$.2826 + .9403 = 1.2229$

**ADJUSTMENT CALCULATION**

December 21, 2015 Blended Average ± August 10, 2015 Base Blended Average = Adjustment

$1.2229 - 1.5749 = -.3520^*$

\*This figure being a negative number will be subtracted from the base Bid price. If the figure is a positive number it would be added to the base Bid price. For the OGS web based posted pricing this adjustment will be added or subtracted to the base Bid price.

**ALL FIGURES ARE TRUNACTED TO FOUR DECIMAL PLACES IN DOLLARS PER GALLON.**

- (3) Bidders shall designate in their Bid an individual, the individual’s position in the company and telephone number, who will be responsible for and authorized to act on behalf of the company with respect to these price adjustments.

**6.5 OPIS Posting Locations Pricing**

OPIS Posting Locations have been established for all counties. The pricing based on the weekly average published prices on August 30, 2021 for N.Y. Harbor Barge, Linden, and Spot Market Price for New York Ethanol are shown in the table below, by fuel grade:

Fuel Grade	Price Based on Linden Weekly Average	Price Based on NY Harbor Barge Weekly Average and Ethanol	Price Based on New York Spot Market Price and Linden Weekly Average
Regular Unleaded	\$2.1702	N/A	N/A
Mid Unleaded	\$2.2480	N/A	N/A
Premium Unleaded	\$2.3647	N/A	N/A
OPRG(E) Regular	N/A	\$2.2251	N/A
OPRG(E) Mid Range	N/A	\$2.2859	N/A
OPRG(E) Premium	N/A	\$2.3467	N/A
E-85	N/A	N/A	\$2.3306

**6.5.1 Location Change or Substitution**

Should the designated posting location become unavailable or differ from the current description and/or format, a posting determined by the Commissioner in his/her sole discretion, to be most reflective of market conditions will be used.

**6.5.2 Calculation Change or Substitution**

Should the product revision calculation become unavailable or differ from the current description and/or format, a calculation determined by the Commissioner in his/her sole discretion, to be most reflective of market conditions will be used.

**6.5.3 Product Change or Substitution**

Should the product originally awarded become unavailable or cannot be supplied by the Contractor for any reason (except as provided for in the Savings/Force Majeure clause of Appendix B), the new product and price calculation determined by the Commissioner in his/her sole discretion, to be most reflective of market conditions will be used.

**6.6 Best Pricing Offer**

During the Contract term, if the Commissioner becomes aware that the Contractor is selling substantially the same or a smaller quantity of a Product outside of this Contract upon the same or similar terms and conditions as that of this Contract at a lower price to a federal, state or local governmental entity, the price under this Contract, after consultation with the Contractor, may be reduced to a lower price on a prospective basis at the discretion of the Commissioner. The Commissioner reserves the right to request information to verify pricing for the purposes of this clause.

**6.7 Price Structure**

- a) If, during the Contract Term, the Contractor is unable or unwilling to meet contractual requirements in whole or in part based on the price structure of the Contract, it shall immediately notify the Office of General Services, Procurement Services in writing. Such notification shall not relieve the Contractor of its responsibilities under the Contract. The State may, but is not required to, consider an equitable adjustment in the Contract terms and/or pricing in the circumstances outlined in Appendix B, *Savings/Force Majeure*.
- b) Should the Commissioner in his or her sole discretion determine during the Contract Term that (i) the Contract price structure is unworkable, detrimental, or injurious to the State, or (ii) the Contract price structure results in prices which are unreasonable, excessive, or not truly reflective of current market conditions, and no adjustment in the Contract terms and/or pricing is mutually agreeable, the State may terminate the Contract upon 10 business days written notice mailed to the Contractor.
- c) Should the OPIS posting locations used for fuel price adjustments/revisions become unworkable or unavailable, the Commissioner reserves the right to switch to the most appropriate index and/or location, and adjust the base price(s) accordingly. Please refer to clause 6.5, OPIS Posting Locations Pricing. for additional factors.

**6.8 Ordering**

Purchase Orders shall be made in accordance with the terms set forth in Appendix B, *Purchase Orders*. Authorized Users may submit orders over the phone, and, if available, may submit orders electronically via web-based ordering, e-mail, or facsimile at any time. Orders submitted shall be deemed received by Contractor on the date submitted.

All orders shall reference Contract number, requisition, and/or Purchase Order number (if applicable). Upon Contractor's receipt of an order, confirmation is to be provided to the Authorized User electronically or via



facsimile. Order confirmation should be sufficiently detailed, and include, at a minimum, purchase price, date of order, delivery information (if applicable), Authorized User name, and sales representative (if applicable).

**6.9 Purchasing Card Orders**

Bidders shall indicate (via Attachment 5 – Bidder Information Questionnaire) if they will accept the New York State Procurement Card. For all purchases executed using a New York State Procurement Card, Contractor shall provide an itemized receipt with each delivery.

If the Contractor accepts orders using the State’s Purchasing Card (see Appendix B, Purchasing Card), also referred to as the Procurement Card, the Contractor shall not charge or bill the Authorized User for any additional charges related to the use of the Purchasing Card, including but not limited to processing charges, surcharges or other fees.

**6.10 Minimum Order**

Minimum delivery shall be 500 gallons to each tank at each delivery location (site) as determined by the Delivery Schedule. Minimum order for Motor Transport deliveries shall be 5,500 gallons. Deliveries under 500 gallons are at the Contractor’s option, except for tank top-offs for testing.

All deliveries requested by an Authorized User of less than the minimum order size, including tank top-offs for tank testing, shall qualify for contract pricing. In addition, the following surcharge may be utilized by the Contractor (except for automatic replenishment):

Determination for total gross tank capacity shall include all manifolded tanks. All locations granted a request from the Contractor for “automatic replenishment” per Section 3.6 Automatic Replenishment, shall be exempt from minimum order requirements, including other factors out of the control of Authorized Users (e.g., short filling, mechanical issues, inadequate fuel supply). In no case shall a surcharge be applied to a location while on “automatic replenishment.”

Quantity Delivered	Optional Surcharge
Under 500	\$50.00

Upon written direction by OGS, an Authorized User shall have one (1) delivery per tank per contract year for tank top-off testing that is exempt from any minimum order surcharge.

If delivering to same property, but to separate tanks, minimum delivery charge will only be applicable if total delivery to property is less than minimum order size.

**6.11 Invoicing and Payment**

Invoicing and payment shall be made in accordance with the terms set forth in Appendix B, *Contract Invoicing*.

The Contractor is required to provide the Authorized User with one invoice for each Purchase Order at the time of delivery. The invoice must include detailed line item information to allow Authorized Users to verify that pricing at point of receipt matches the Contract price on the original date of order. At a minimum, the following fields must be included on each invoice:

- Contractor Name
- Contractor Billing Address
- Contractor Federal ID Number
- NYS Vendor ID Number
- Account Number

- NYS Contract Number
- Name of Authorized User indicated on the Purchase Order
- NYS Agency Unit ID (if applicable)
- Authorized User's Purchase Order Number
- Order Date
- Invoice Date
- Invoice Number
- Invoice Amount
- Product Descriptions
- Unit Price
- Quantity
- Unit of Measure
- Dates of Service/Delivery (if applicable)

Cost centers or branch offices within an Authorized User may require separate invoicing as specified by each Authorized User. The Contractor's billing system shall be flexible enough to meet the needs of varying ordering systems in use by different Authorized Users. Visit the following link for further guidance for vendors on invoicing: <https://bsc.ogs.ny.gov/nys-vendors>.

## **6.12 Product Delivery**

Delivery of all Contract Products shall be made in accordance with Appendix B, §31 *Product Delivery* and §33 *Shipping/Receipt of Product*. Delivery shall be made as specified and in accordance with instructions furnished with each order, unless otherwise directed in writing. Contractor must be prepared, at all times, to make prompt delivery. Every bid states what the maximum time a delivery will take from the moment of order, but the time shall never exceed forty-eight (48) hours. . In State declared emergencies, fuel must be delivered within eight (8) to twelve (12) hours of notification. Should there be a State declared emergency, an after-hours or weekend emergency, or should an agency run out of fuel at any time creating an emergency situation, the Contractor shall be required to provide product within eight (8) to twelve (12) hours of a telephone call from the agency.

Delivery shall be made in accordance with instructions on the Purchase Order from each Authorized User. If there is a discrepancy between the Purchase Order and what is listed on the Contract, it is the Contractor's obligation to seek clarification from the ordering Authorized User and, if applicable, from OGS, Procurement Services. On occasion, to prevent fuel run outs during storms or other emergency situations, the Contractor must allow Authorized Users the flexibility to manually schedule deliveries to top-off tank inventories. Normal deliveries are considered to be Monday thru Friday (8:00 am - 5:00 pm). Saturday/Sunday deliveries are not standard and are to be made on an emergency basis (and not a regular basis) ONLY, or if a run out is imminent before the next normal delivery day. Delivery of fuel should give first priority to "Human Needs Customers."

Failure to make prompt delivery may result in an Authorized User's submission of a Contract Performance Report to OGS. In addition to any available remedies per Appendix B, Section 48 *Remedies for Breach*, (a), (d) and (e), the Authorized User shall have the right to purchase sufficient fuel on the open market to fill such tank or tanks and to charge any increase in price paid over the current contract price to the account of the Contractor.

Authorized Users shall be responsible for ensuring that tanks are accessible to the Contractor. Authorized Users should also make certain that receiving personnel are available at time of delivery. Failure of the Authorized User to make appropriate delivery arrangements, which prevents the delivery of product upon Contractor's arrival at delivery site, may result in a charge to the Authorized User for the Contractor's transportation costs. The Contractor must notify the Authorized User of the attempted delivery prior to charging for any future delivery attempts for the same circumstance. The Contractor must state the amount that would be charged for the direct cost of this subsequent delivery attempt, and provide supporting documentation that substantiates the direct cost for the failed delivery at the fault of the Authorized User. The Authorized User must agree in writing to any such costs for subsequent delivery attempts, prior to the Contractor making the

subsequent delivery. At no time should a charge be applied to an Authorized User for an attempted delivery that failed at no fault of their own.

### **6.13 Method of Delivery**

**TW:** Delivery by tank wagon into storage tanks of less than 5,500 gallons

**MT:** Minimum delivery of 5,500 gallons to one or more tanks from one fixed location of the delivery vehicle.  
All such deliveries shall first be recorded directly into the transporting vehicle.

### **6.14 Delivery Schedules**

The delivery schedules, based on Authorized Users' requirements submitted to Procurement Services by Requirement Letter RL215, are available as a guide to indicate proposed delivery points and estimated annual quantities. Bidders are advised that these delivery schedules may be revised up to the date of the bid opening to accommodate the addition and/or deletion of delivery points and quantities and any changes will be posted to the OGS website under Bid Calendar and the Contract Reporter as a Bid Notification Update. Bidders should therefore make note of the revisions. This information is available to clarify delivery conditions, where possible. Any specific questions regarding the site conditions should be directed to the end-user via any communication available, as shown on the Delivery Schedule. The Delivery Schedules are attachments in this Solicitation, and any updates, (if any) are available on the OGS website.

Contractors shall be obligated to deliver under the resulting contract to any State agency which places a purchase order (or other ordering mechanism between the Contractor and ordering entity) under said contract, whether or not such delivery location is identified in the delivery schedules. Any political subdivision or other non-State entity which has not filed a requirement with OGS Procurement Services as of the date of the bid, opening shall be eligible to receive deliveries at Contractor's option. This will be done upon placement of a valid purchase order (or other ordering mechanism between the contractor and the ordering entity) to the Contractor's address as indicated in the contract award notification. Contractors must notify OGS Procurement Services of any new business created from Authorized Users request for delivery so that OGS Procurement Services can make adjustments to the delivery schedules to capture these new accounts. All cases shall require Contractors to notify both contract user and OGS Procurement Services of any locations not identified on the Delivery Schedules within thirty (30) days after the first delivery is made. See the "New Accounts" clause of this Solicitation.

At any time during the contract, Contractors may be advised in writing by OGS regarding political subdivisions or other Non-State entities which have filed on a timely basis but do not appear, through no fault of their own, on the delivery schedule.

Filed requirements and delivery schedules may be updated by OGS for any mutually agreed upon extension.

NOTE: On occasion entities may appear on the wrong delivery schedule as entities self-report. For example, a non- State entity may appear on the Agency schedule on occasion or vice versa. OGS Procurement Services does review and seek clarification of information on the delivery schedules but does not catch all errors.

### **6.15 Product Returns and Exchanges**

In addition to the provisions of Appendix B Section 34 through 36, *Title and Risk of Loss, Product Substitution, and Rejected Product*, Products returned or exchanged due to quality problems, duplicated shipments, outdated Product, incorrect Product shipped, Contractor errors otherwise not specified, or Products returned or exchanged due to Authorized User errors, shall be replaced with specified Products or the Authorized User shall be credited or refunded for the full purchase price.

Products shall be replaced within guaranteed delivery times (regular or emergency as applicable) of written notification to the Contractor of the Authorized User's intent to return or exchange the Product. Contractor can

charge only a restocking fee for Product returned or exchanged due to Authorized User error that is determined not to be suitable for resale; the restocking fee cannot exceed the net price of the returned or exchanged Product.

Any credit or refund shall be applied against the next bill/invoice submitted by the Contractor to the Authorized User. If no credit or refund, or only a partial credit or refund, is made in such fashion, the Contractor shall pay to the Authorized User the amount of such credit or refund or portion thereof still outstanding, within 30 calendar days of demand.

#### **6.16 Unanticipated Excessive Purchase**

The State reserves the right to negotiate lower pricing, or to advertise for Bids, for any unanticipated excessive purchase.

#### **6.17 Contract Administration**

The Bidder shall provide a sufficient number of Customer Service employees who are knowledgeable and responsive to Authorized User needs and who can effectively service the Contract. Bidder shall also provide an Emergency Contact in the event of an emergency occurring after business hours or on weekend/holidays.

Bidder shall provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Information regarding the Customer Service, Emergency Contact, and Contract Administrator shall be set forth in Attachment 5 – *Bidder Information Questionnaire*. Contractor must notify OGS within five Business Days if it's Contract Administrator, Emergency Contact, or Customer Service employees change, and provide an interim contact person until the position is filled. Changes shall be submitted electronically via e-mail to the OGS Contract Management Specialist.

#### **6.18 NYS Financial System (SFS)**

New York State is currently operating on an Enterprise Resource Planning (ERP) system, Oracle PeopleSoft software, referred to as the Statewide Financial System (SFS). SFS is currently on PeopleSoft Financials version 9.2. SFS supports requisition-to-payment processing and financial management functions.

The State is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure Products in SFS. This application provides catalog capabilities. Contractors with Centralized Contracts have the ability to provide a "hosted" or "punch-out" catalog that integrates with SFS and is available to Authorized Users via a centralized eMarketplace website. Additional information may be found at: <https://ogs.ny.gov/procurement/emarketplace>.

There are no fees required for a Contractor's participation in the catalog site development or management. Upon completion and activation of an on-line catalog, State Agencies will process their orders through the SFS functionality and other Authorized Users can access the catalog site to fulfill orders directly.

The State is also implementing the PeopleSoft Inventory module in the near future. Further information regarding business processes, interfaces, and file layouts currently in place may be found at: <http://www.sfs.ny.gov> and <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

#### **6.19 N.Y. State Finance Law § 139-I**

Pursuant to N.Y. State Finance Law § 139-I, every bid made on or after January 1, 2019 to the State or any public department or agency thereof, where competitive bidding is required by statute, rule or regulation, for work or services performed or to be performed or goods sold or to be sold, and where otherwise required by such public department or agency, shall contain a certification that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of N.Y. State Labor Law § 201-g.

N.Y. State Labor Law § 201-g provides requirements for such policy and training and directs the Department of Labor, in consultation with the Division of Human Rights, to create and publish a model sexual harassment prevention guidance document, sexual harassment prevention policy and sexual harassment prevention training program that employers may utilize to meet the requirements of N.Y. State Labor Law § 201-g. The model sexual harassment prevention policy, model sexual harassment training materials, and further guidance for employers, can be found online at the following URL: <https://www.ny.gov/combating-sexual-harassment-workplace/employers>.

Pursuant to N.Y. State Finance Law § 139-I, any bid by a corporate bidder containing the certification required above shall be deemed to have been authorized by the board of directors of such bidder, and such authorization shall be deemed to include the signing and submission of such bid and the inclusion therein of such statement as the act and deed of the bidder.

If the Bidder cannot make the required certification, such Bidder shall so state and shall furnish with the bid a signed statement that sets forth in detail the reasons that the Bidder cannot make the certification. After review and consideration of such statement, OGS may reject the bid or may decide that there are sufficient reasons to accept the bid without such certification.

The certification required above can be found on Attachment 2 – NYS Required Certifications, which Bidder must submit with its bid.

## **6.20 Insurance**

The Contractor shall maintain in force at all times during the terms of the Contract, policies of insurance pursuant to the requirements outlined in Attachment 4 – *Insurance Requirements*.

## **6.21 Report of Contract Usage**

Contractor shall submit Attachment 8 – *Report of Contract Usage* including total sales to Authorized Users of this Contract by Contractor, and all authorized resellers, dealers and distributors, if any, semi-annually (twice per year – due January 15th for sales July 1st through December and due July 15th for sales January 1st through June 30th). If the Contract period begins or ends in a fractional portion of a reporting period, only the actual Contract sales for this fractional period should be included in the semi-annual report.

Contractors shall specify if any authorized resellers, dealers or distributors are NYS Certified Minority- and/or Women-Owned Business Enterprises (MWBs), small business enterprises (SBEs), or Service-Disabled Veteran-Owned Businesses (SDVOBs).

The report is to be submitted electronically via e-mail in Microsoft Excel to OGS Procurement Services, to the attention of the individual listed on the front page of the Contract Award Notification and shall reference the Contract Group Number, Award Number, Contract Number, Sales Period, and Contractor's name.

The report in Attachment 8 – *Report of Contract Usage* contains the minimum information required. Additional related sales information, such as detailed user purchases may be required by OGS and must be supplied upon request. Failure to submit reports on a timely basis may result in Contract cancellation and designation of Contractor as non-responsible.

## **6.22 Contractor Requirements and Procedures for Participation by New York State Certified Minority- and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women**

### **I. New York State Law**

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”), the New York State Office of General Services (“OGS”) is required to promote opportunities for the maximum feasible participation of New York State-certified

Minority- and Women-Owned Business Enterprises (“MWBEs”) and the employment of minority group members and women in the performance of OGS contracts.

II. General Provisions

- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for MWBEs. Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, State, or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, a finding of non-responsibility, breach of contract, withholding of funds, suspension or termination of the Contract, and/or such other actions or enforcement proceedings as allowed by the Contract and applicable law.

III. Equal Employment Opportunity (EEO)

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000 for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to, the contracting State agency (the “Work”) except where the Work is for the beneficial use of the Contractor.
  - 1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate, or distinct from the Contract; or (ii) employment outside New York State.
  - 2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor’s equal employment opportunity policy. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.
- B. Form EEO 100 – Staffing Plan  
To ensure compliance with this section, the Contractor agrees to submit, or has submitted with the Bid, a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.
- C. NYS Contract System - Workforce Utilization Reporting Module (Commodities and Services)
  - 1. The Contractor shall submit, and shall require each of its subcontractors to submit, a Workforce Audit to report the actual workforce utilized in the performance of the Contract by

the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Audits must be submitted electronically in the NYS Contract System through the Workforce Audit Module found at the following website: <https://ny.newnycontracts.com> and must be submitted on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January.

2. Separate audits shall be completed by Contractor and all subcontractors.
  3. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall submit the Workforce Audit and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.
- D. Contractor shall comply with the provisions of the Human Rights Law and all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal and conviction and prior arrest.

#### IV. Contract Goals

- A. For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers, or suppliers to Contractor. Contractor is, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.
- B. Good Faith Efforts  
Pursuant to 5 NYCRR § 142.8, evidence of good faith efforts shall include, but not be limited to, the following:
1. A list of the general circulation, trade, and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers, copies of such solicitations, and any responses thereto.
  2. A list of the certified MWBEs appearing in the Empire State Development ("ESD") MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
  3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with, or obtaining supplies from, certified MWBEs.
  4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.

5. Dates of any pre-bid, pre-award, or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
6. Other information deemed relevant to the request.

V. Fraud

Any suspicion of fraud, waste, or abuse involving the contracting or certification of MWBEs shall be immediately reported to ESD's Division of Minority and Women's Business Development at (855) 373-4692.

**ALL FORMS ARE AVAILABLE AT:** <https://ogs.ny.gov/MWBE>

**6.23 Participation Opportunities For New York State Certified Service-Disabled Veteran Owned Businesses**

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"), thereby further integrating such businesses into New York State's economy. OGS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OGS contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders/Contractors are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Bidder/Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <https://ogs.ny.gov/Veterans/>.

Bidder/Contractor is encouraged to contact the Division of Service-Disabled Veteran's Business Development at 518-474-2015 to discuss methods of maximizing participation by SDVOBs on the Contract.

ALL FORMS ARE AVAILABLE AT: <https://ogs.ny.gov/Veterans/>.

**6.24 Environmental Attributes and NYS Executive Order Number 4**

New York State is committed to environmental sustainability and endeavors to procure Products with reduced environmental impact. One example of this commitment may be found in Executive Order No. 4 (Establishing a State Green Procurement and Agency Sustainability Program), which imposes certain requirements on State Agencies, authorities, and public benefit corporations when procuring Products. More information on Executive Order No. 4, including specifications for offerings covered by this Contract, may be found at: <https://www.ogs.ny.gov/greeny/>

State entities subject to Executive Order No. 4 are advised to become familiar with the specifications that have been developed in accordance with the Order, and to incorporate them, as applicable, when making purchases under this Contract.

**6.25 Diesel Emission Reduction Act**

Pursuant to N.Y. Environmental Conservation Law § 19-0323 (the "Law"), it is a requirement that heavy-duty diesel vehicles in excess of 8,500 pounds use the best available retrofit technology ("BART") and ultra-low sulfur diesel fuel ("ULSD"). The requirement of the Law applies to all vehicles owned, operated by or on behalf



of, or leased by State Agencies and State or regional public authorities. It also requires that such vehicles owned, operated by or on behalf of, or leased by State Agencies and State or regional public authorities with more than half of its governing body appointed by the Governor utilize BART.

The Law may be applicable to vehicles used by Contractors “on behalf of” State Agencies and public authorities and require certain reports from Contractors. All heavy-duty diesel vehicles must have BART by the deadline provided in the Law. The Law also provides a list of exempted vehicles. Regulations set forth in 6 NYCRR Parts 248 and 249 provide further guidance. The Bidder hereby certifies and warrants that all heavy-duty vehicles, as defined in the Law, to be used under this Contract, will comply with the specifications and provisions of the Law, and 6 NYCRR Parts 248 and 249.

### **6.26 Guarantee**

The Contractor guarantees to furnish adequate protection from damage to Authorized User’s buildings, grounds and/or equipment occurring on account of or in connection with, or occasioned by, or resulting from the furnishing and delivering of fuel under the resultant Contract and shall be liable for any damages for which he or his employees are responsible

This liability includes but is not limited to oil spills occurring during delivery. The Contractor shall provide constant surveillance during delivery by having a person in attendance at all times at the point of transfer. Spills of any size shall be immediately reported to the agency Business Office to effect contact with a representative of the Department of Environmental Conservation. More information can be viewed at:  
<http://www.dec.ny.gov/chemical/8428.html>

A call can be placed twenty-four (24) hours a day with the New York State Oil Spill Hotline at 1-800-457-7362.

### **6.27 Engineering Service**

Contractor must be prepared at all times to furnish engineering service when so requested and/or to investigate a complaint and report to the Authorized User and OGS on any complaint that might arise in connection with the use of Contractor’s fuel in Authorized User(s) equipment. This engineering service will include but not be limited to the diagnosis of fuel related engine problems in the Authorized User’s equipment utilizing the Contractor’s fuel.

### **6.28 NYS Vendor Responsibility**

OGS conducts a review of prospective Contractors (“Bidders”) to provide reasonable assurances that the Bidder is responsive and responsible. A For-Profit Business Entity Questionnaire (hereinafter “Questionnaire”) is used for non-construction Contracts and is designed to provide information to assess a Bidder’s responsibility to conduct business in New York based upon financial and organizational capacity, legal authority, business integrity, and past performance history. By submitting a Bid, Bidder agrees to fully and accurately complete the Questionnaire. The Bidder acknowledges that the State’s execution of the Contract will be contingent upon the State’s determination that the Bidder is responsible, and that the State will be relying upon the Bidder’s responses to the Questionnaire, in addition to all other information the State may obtain from other sources, when making its responsibility determination.

OGS recommends each Bidder file the required Questionnaire online via the New York State VendRep System. To enroll in and use the VendRep System, please refer to the VendRep System Instructions and User Support for Vendors available at the Office of the State Comptroller’s (OSC) website at:  
<http://www.osc.state.ny.us/vendors/index.htm> or to enroll, go directly to the VendRep System online at <https://www.osc.state.ny.us/state-vendors/vendrep/vendrep-system>.

Vendors must provide their New York State Vendor Identification Number when enrolling. For information on how to request assignment of a Vendor ID, see the *NYS Vendor File Registration* section. OSC provides direct support for the VendRep System through user assistance, documents, online help, and a help desk. The OSC Help Desk contact information is located at <http://www.osc.state.ny.us/portal/contactbuss.htm>. Bidders opting

to complete and submit the paper questionnaire can access this form and associated definitions via the OSC website at [http://www.osc.state.ny.us/vendrep/forms\\_vendor.htm](http://www.osc.state.ny.us/vendrep/forms_vendor.htm).

In order to assist the State in determining the responsibility of the Bidder prior to Contract award, the Bidder must complete and certify (or recertify) the Questionnaire no more than six (6) months prior to the Bid due date. A Bidder's Questionnaire cannot be viewed by OGS until the Bidder has certified the Questionnaire. It is recommended that all Bidders become familiar with all of the requirements of the Questionnaire in advance of the Bid opening to provide sufficient time to complete the Questionnaire.

The Bidder agrees that if it is awarded a Contract the following shall apply:

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

The Commissioner of OGS, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of OGS issues a written notice authorizing a resumption of performance under the Contract.

The Contractor agrees that if it is found by the State that Contractor's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Contract may be terminated by the Commissioner of OGS at the Contractor's expense where the Contractor is determined by the Commissioner of OGS to be non-responsible. In such event, the Commissioner of OGS may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

#### **6.29 NYS Tax Law Section 5-a**

Tax Law § 5-a requires certain Contractors awarded State Contracts for commodities, services and technology valued at more than \$100,000 to certify to NYS Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to Contracts where the total amount of such Contractors' sales delivered into New York State is in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and Subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

A Contractor is required to file the completed and notarized Form ST-220-CA with the Bid to OGS certifying that the Contractor filed the ST-220-TD with DTF. Only the Form ST-220-CA is required to be filed with OGS. The ST-220-CA can be found at [https://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf). The ST-220-TD can be found at [https://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](https://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf). Contractor should complete and return the certification forms within five (5) business days of request (if the forms are not completed and returned with Bid submission). Failure to make either of these filings may render a Contractor non-responsive and non-responsible. Contractor shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law. The ST-220-TD only needs to be filed once with DTF, unless the information changes for the Contractor, its affiliates, or its Subcontractors.

Vendors may call DTF at 518-485-2889 with questions or visit the DTF web site at <https://www.tax.ny.gov/> for additional information.

### **6.30 Non-State Agencies Participation in Centralized Contracts**

New York State political subdivisions and others authorized by New York State law may participate in Centralized Contracts. These include, but are not limited to, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See Appendix B, *Participation in Centralized Contracts*. For Purchase Orders issued by the Port Authority of New York and New Jersey (or any other authorized entity that may have delivery locations adjacent to New York State), the terms of the *Price* clause shall be modified to include delivery to locations adjacent to New York State.

Upon request, all eligible non-State agencies must furnish Contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. A list of categories of eligible entities is available on the OGS web site (<https://www.ogs.ny.gov/purchase/snt/othersuse.asp>). Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to NYS Procurement Services Customer Services at 518-474-6717.

### **6.31 Extension of Use**

Any Contract resulting from this Solicitation may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State and the Contractor. Political subdivisions and other authorized entities within each participating state or governmental jurisdiction may also participate in any resultant Contract if such state normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

### **6.32 New Accounts**

Contractor may ask State Agencies and other Authorized Users to provide information in order to facilitate the opening of a customer account, including documentation of eligibility to use New York State Contracts, agency code, name, address, and contact person. State Agencies shall not be required to provide credit references.

Contractors must notify OGS Procurement Services of any new business created from Authorized Users' requests for delivery, so that OGS Procurement Services can make adjustments to the delivery schedules to capture these new accounts. All cases shall require Contractors to notify both contract user and OGS Procurement Services of any locations not originally identified on the Delivery Schedules, within thirty (30) days after the first delivery is made.

### **6.33 Centralized Contract Modifications**

A. OGS, an Authorized User, or the Contractor may suggest modifications to the Centralized Contract or its Appendices. Except as specifically provided herein, modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the parties. Modifications may take the form of an update or an amendment. "Updates" are changes that do not require a change to the established Centralized Contract terms and conditions. A request to add new Products at the same or better price level is an example of an update. "Amendments" are any changes that are not specifically covered by the terms and conditions of the Centralized Contract, but inclusion is found to be in the best interest of the State. A request to change a contractual term and condition is an example of an amendment.

B. Updates to the Centralized Contract and the Appendices may be made in accordance with the contractual terms and conditions to incorporate new Products, make price level revisions, delete Products, or to make such other updates to the established Centralized Contract terms and conditions, not resulting in a change to such terms and conditions, which are deemed to be in the best interest of the State.

C. OGS reserves the right to consider modifications which are not specifically covered by the terms of the Centralized Contract, but are judged to be in the best interest of the State. Such modifications are deemed

amendments to the Centralized Contract and may require negotiations between Contractor and OGS before execution.

D. Modifications proposed by OGS or an Authorized User, including updates and amendments, shall be processed in accordance with the terms of the Centralized Contract and Appendix B, *Modification of Contract Terms*.

### 6.34 Drug and Alcohol Use Prohibited

For reasons of safety and public policy, in any Contract resulting from this Solicitation, the use of alcoholic beverages or illegal drugs by the Contractor's personnel shall not be permitted in performance of the Contract.

### 6.35 Traffic Infractions

Neither the State nor Authorized Users will be liable for any expense incurred by the Contractor's personnel for any parking fees or as a consequence of any traffic infraction or parking violation attributable to employees of the Contractor in performance of the Contract.

### 6.36 Samples

A. **Bidder Supplied Samples:** The Commissioner reserves the right to request from the Bidder/Contractor a representative sample(s) of the Product offered at any time prior to or after award of a Contract. Unless otherwise instructed, samples shall be furnished within the time specified in the request. Untimely submission of a sample may constitute grounds for rejection of the Bid or cancellation of the Contract. Samples must be submitted free of charge and be accompanied by the Bidder's name and address, any descriptive literature relating to the Product and a statement indicating how and where the sample is to be returned. Where applicable, samples must be properly labeled with the appropriate Solicitation or Contract reference.

A sample may be held by the Commissioner during the entire term of the Contract and for a reasonable period thereafter for comparison with deliveries. At the conclusion of the holding period, the sample, where feasible, will be returned as instructed by the Bidder, at the Bidder's expense and risk. Where the Bidder has failed to fully instruct the Commissioner as to the return of the sample (i.e., mode and place of return, etc.) or refuses to bear the cost of its return, the sample shall become the sole property of the receiving entity at the conclusion of the holding period.

B. **Enhanced Samples:** When an approved sample exceeds the minimum specifications, all Product delivered must be of the same enhanced quality and identity as the sample. Thereafter, in the event of a Contractor's default, the Commissioner may procure a Product substantially equal to the enhanced sample from other sources, charging the Contractor for any additional costs incurred.

C. **Conformance with Samples:** Submission of a sample (whether or not such sample is tested by, or for, the Commissioner) and approval thereof shall not relieve the Contractor from full compliance with all terms and conditions, performance related and otherwise, specified in the Solicitation. If in the judgment of the Commissioner the sample or Product submitted is not in accordance with the specifications or testing requirements prescribed in the Solicitation, the Commissioner may reject the Bid. If an award has been made, the Commissioner may cancel the Contract at the expense of the Contractor.

D. **Testing:** All samples are subject to tests in the manner and place designated by the Commissioner, either prior to or after Contract award. Unless otherwise stated in the Solicitation, Bidder samples consumed or rendered useless by testing will not be returned to the Bidder. Testing costs for samples that fail to meet Contract requirements may be at the expense of the Contractor.

E. **Requests for Samples By Authorized Users:** Requests for samples by Authorized Users require the consent of the Contractor. Where Contractor refuses to furnish a sample, Authorized User may, in its sole discretion, make a determination on the performance capability of the Product or on the issue in question.

