



**Office of General Services
Procurement Services**

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

Invitation for Bids

Redline; For Information Only; Do not submit with Bid

BID OPENING DATE: 6/2/2022 <u>6/9/2022</u> TIME: 11:00 A.M. EST INVITATION FOR BIDS NUMBER: 23261		TITLE: Group 05900 – NATURAL GAS (Firm and Interruptible Supply) (Statewide) Classification Codes: 15 Utilities	
CONTRACT PERIOD: September 1, 2022 – August 31, 2023			
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		Ruth <u>K.</u> Quezada Team Leader Telephone No. (518) 473-2801	

Bidder's Federal Tax Identification Number: <i>(Do Not Use Social Security Number)</i>		NYS Vendor Identification Number: <i>(See New York State Vendor File Registration Clause)</i>		
Legal Business Name of Company Bidding:				
D/B/A – Doing Business As (if applicable):				
Street	City	State	County	Zip Code
E-mail Address:		Company Web Site:		

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 60 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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- Appendix B – *General Specifications (April 2016)*
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- Attachment 8 – *Report of Contract Usage*
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- Attachment 10 – *Pipeline Agreement*
- Attachment 11 – EO 16 Certification

1. INTRODUCTION

1.1. Scope

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 Natural Gas to Authorized Users’ facilities. This concept is in accordance with gas deregulation actions of the Federal Energy Regulatory Commission, the New York State Legislature, and the New York State Public Service Commission.

1.2. Special Notes To Bidder

It is the intent of the Office of General Services/Procurement Services to make awards within one Business Day of the bid opening date of June-9, 2022 and until that time bids must remain firm, and cannot be withdrawn. If, however, an award is not in effect as of close of business on June 10, 2022, bids shall remain firm in accordance with Appendix B, Timeframe for Offers.

For Customers serviced by Liberty Utility, an annual bank balance cash-out (credit or debit), shall be included in the Authorized User’s invoice. See Section 6.7 – Invoicing and Payment.

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 Contractor must furnish all quantities actually ordered at or below the Contract prices. The anticipated dollar value of the award for this Solicitation, based on Authorized Users’ filed requirements, is approximately \$31,832,149 annually. 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 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 Solicitation. Such factors include, but are not limited to, the following:

1. 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.
2. The individual value of each Contract is indeterminate and will depend upon actual Authorized User demand and actual quantities used during the contract period.
3. Contract pricing that is lower than anticipated could result in a higher quantity of purchases by Authorized Users than anticipated.
4. 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.

All dollar values and quantities quoted in this IFB shall be based on Authorized Users’ estimated use for a twelve (12) months volume in Dekatherms. The estimates by Lot are specified in Attachment 1 – Pricing, and in Attachment 9 – Delivery Schedule.

The resulting contract(s) under this award will be a centralized contract(s) based on Authorized Users’ filed requirements. By providing an estimate to OGS Procurement Services, the Authorized User has agreed to purchase all of the Authorized User’s needed and required Natural Gas under the terms of this IFB and any resulting Contract for the duration of the awarded Contracts. The individual value of each Contract is indeterminate. OGS makes no guarantee as to how much Natural Gas will actually be ordered and/or delivered.

See 25, “Participation in Centralized Contracts” and Clause 28, “Estimated/Specific Quantity Contracts” in Appendix B, OGS General Specifications.

1.4. Detailed Scope

The Natural Gas contract places special obligations on a participating Customer and is governed by Uniform Commercial Code § 2-306. A Customer that wishes to purchase must commit in advance to make all necessary purchases for Natural Gas from the awarded Contractor. In the Fixed Price – Firm Supply, Indexed Price – Firm Supply and the Indexed Price – Interruptible Supply Lots, the quantities listed are intended to be indicative of the amount of Natural Gas to be purchased. However, the contract shall only be for the quantities actually used during the contract term, unless the Customer is participating in the monthly excess/deficiency usage adjustment program. See also clause 25, “Participating in Centralized Contracts” and clause 28, “Estimated/Specific Quantity Contracts” in Appendix B, OGS General Specifications.

1.5. Contract Types

The sales and deliveries of Natural Gas shall commence as soon as practicable after the completion of necessary transportation arrangements. Each contract type has distinct characteristics and requires specific Customer commitments and obligations. The more significant aspects of each contract type are described as follows:

- A. Fixed Price – Firm Supply
 1. The Customer will receive Firm Supply.
 2. The Customer will pay for quantities actually used.
 3. The Customer will pay one final Fixed Price for the life of the contract.
 4. The Contractor is responsible for all Balancing to the Burner Tip.
 5. The Contractor is required to deliver Natural Gas at all times. Firm supply specified in this Solicitation means primary firm non-recallable primary delivery point capacity to the City Gate and not secondary Firm Supply as defined below.

- B. Indexed Price – Firm Supply
 1. The Customer will receive Firm Supply.
 2. The Customer will pay for quantities actually used.
 3. The commodity price for Natural Gas will vary monthly based on the New York Mercantile Exchange (NYMEX) futures commodity prices. A fixed Basis Cost will be added to the commodity price to determine each month’s Indexed Price. Prices are revised and scheduled for release by OGS Procurement Services during the last week of the month preceding the month of delivery.
 4. The Contractor is responsible for all Balancing to the Burner Tip.
 5. The Contractor is required to deliver a Firm Supply of Natural Gas at all times. Firm Supply specified in this Solicitation means primary firm non-recallable primary delivery point capacity to the City Gate and not secondary Firm Supply as defined below.
 6. The Customer/facility can burn an Alternate Fuel for the purpose of testing or maintaining the equipment’s capability of burning an Alternate Fuel, or in the event of the need for fuel tank turnover (burning and replacing the Alternate Fuel) to maintain the integrity of stored fuel. The Customer/facility MUST notify the Contractor via E-mail at least 14 Business Days prior to switching. The Customer/facility MUST provide the Contractor with an estimate of the duration of the anticipated Alternate Fuel use.

- C. Indexed Price – Interruptible Supply
 1. The Customer must have 100% dual fuel capability.
 2. The commodity price for Natural Gas will vary monthly based on the New York Mercantile Exchange (NYMEX) futures commodity prices. A fixed Basis Cost will be added to the commodity price to determine each month’s indexed price. Prices are revised and scheduled for release by OGS Procurement Services during the last week of the month preceding the month of delivery.
 3. The Contractor is responsible for all Balancing to the Burner Tip.
 4. During upstream pipeline interruptions which prevent City Gate delivery of Customer’s gas, the Contractor shall use all commercially reasonable efforts to secure replacement gas for the Customers.

Such efforts shall include, but not be limited to, supplies on alternate pipelines serving the affected LDC, requests to other ESCO's, and requests to the affected LDC's of the availability of excess

system supply gas ("excess city gas supply"). Contractor shall provide written documentation to Customer of such efforts. If successful, Contractor must obtain facilities authorized personnel pre-approval and then confirm the transaction by submitting a Transaction Confirmation in the format as approved by the North American Energy Standards Board *NAESB).

Price per Dekatherm will be calculated as follows: Contractor's actual cost + \$.30

Contractor's actual cost is defined as the price listed on the above-mentioned Transaction Confirmation Sheet. This confirmation sheet is required for all quantities of gas purchased. Authorized User must document the reasonableness of price in the procurement record.

5. The Customer shall notify the Contractor in writing not less than five (5) Business Days before the first day of each delivery of the estimated monthly and/or daily gas Nomination of the Customer. If agreed to by the Contractor, Nominations may be submitted to the Contractor on an alternate date. The Contractor should make certain that the using Customer submits a Nomination each month, even if the nomination is zero. If Customer nominations are not timely, the Contractor may contact the OGS Procurement Services contract administrator for assistance.

6. Customers in an interruptible service can only implement Alternate Fuel usage if decided at time of monthly nomination "0" and the Alternate Fuel is determined to be less costly based on price information available at the time of nomination. Other arrangements can be made providing mutual consent is established between the Contractor and the end user. Also, the Customer may have its gas supply interrupted when the supplier can provide satisfactory justification for an interruption or Curtailment under the conditions stipulated in this Solicitation and the subsequent award.

7. INTERRUPTIBLE CUSTOMERS ARE NOT PERMITTED TO FUEL SWITCH DURING THE DELIVERY MONTH EXCEPT WHEN THERE IS A PIPELINE OR UTILITY INTERRUPTION/OPERATION FLOW ORDER (OFO) UNLESS MUTUALLY AGREED UPON BY CONTRACTOR AND INDIVIDUAL FACILITY.

1.6. Key Events/Dates

<u>EVENT</u>	<u>DATE</u>	<u>TIME</u>
IFB Release	4/11/2022	N/A
Closing Date for Bidder Questions	5/12/2022	5:00 PM ET
OGS Procurement Services' Responses to Bidder Questions	5/20/2022	N/A
Bid Opening / Due date for Bids	6/2/2022 6/9/2022	11:00 AM ET
Tentative Award Date	6/3/2022 6/10/2022	N/A
Tentative Contract Approval Date / Award Publish Date	7/3/2022 Upon OSC Approval	N/A

1.7. Pre-Bid Conference

There is no Pre-Bid Conference for this Invitation for Bids.

1.8. 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.

1.9. 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 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.

1.10. 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.

1.11. MWBE & SDVOB Interest in Partnering With Bidders

If a New York State certified MWBE or SDVOB would like to indicate its interest in working with participating Bidders, please send an e-mail entitled “Solicitation 23261 MWBE or SDVOB INTEREST_COMPANY NAME” to OGS.sm.PS_CM_FleetFuelRoads@ogs.ny.gov on or before [DATE TIME]. The e-mail content should include:

1. Company Name
2. Contact Name and Contact Information such as Phone Number, Mailing Address and 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 the 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.

1.12. 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. 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://ogs.ny.gov/acpl/>.

1.13. Definitions

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

"Alternate Fuel" shall refer to fuel used other than Natural Gas.

"Balancing" shall refer to the Contractor's managing of a Customer's Natural Gas supply to enable the Contractor to match the Customer's daily usage with the confirmed pipeline delivery of Natural Gas supplies by the utility company.

"Basis Cost" shall refer to the sum of the immediate upstream supply trading point basis plus the transportation basis to the LDC's City Gate. The immediate upstream supply trading point basis shall be bid as Component 1 of the total basis. Examples of an immediate upstream trading point basis would be Dominion, South Point Natural Gas (Platts IFERC) basis futures, Columbia Gas TCO (Platts IFERC) basis futures. Component 2, transportation basis, shall include all transportation fixed and variable costs, LUGF, line loss, LDC Balancing (except for an annual bank balance cash-out for Customers serviced by Liberty Utility), overhead, and profit. Total Basis equals (=) (Immediate Upstream Supply Trading Point plus (+) Transportation Basis) carried to the fourth decimal place. Total Basis Cost shall be firm for the life of the contract and does not include the commodity cost.

"Broker" shall refer to a retail agent who arranges or negotiates for the purchase and sale of Natural Gas. Brokers usually act on behalf of others and do not buy energy for their own end-use Customers.

"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.

"BTU" shall refer to British thermal unit – this standard unit of measurement is used to measure heat energy and to convert CCFs to therms. It is the amount of heat required to increase the temperature of a pint of water (which weighs exactly 16 ounces) by one degree Fahrenheit.

"Burner Tip" shall refer to the point at which Natural Gas is used as a fuel consumption at end user's billing meter.

"Business Day" shall refer to Monday through Friday, excluding NYS Holidays and federal holidays.

"Business Hours" shall refer to 8:00 AM to 5:00 PM ET on Business Days.

"City Gate" shall refer to a point or measuring station at which a distributing gas utility receives gas from a Natural Gas pipeline company or transmission system.

“**Curtailement**” shall refer to a reduction in gas deliveries or gas sales necessitated by a shortage of supply or pipeline capacity.

“**Customer**” shall mean an Authorized User that participates in the contract.

“**Dekatherm**” shall mean one Dekatherm of Natural Gas which contains one million BTU (one MMBTU) of energy. One Dekatherm is equal to 10 therms.

“**Delivery Point**” shall mean the point where Natural Gas exits one system and enters another.

“**ESCO**” shall refer to an Energy Service Company that offers Customers energy and energy related products and services; usually required to be approved by state public utility companies.

“**Event**” shall refer to any day when an Authorized User is receiving Firm Supply to the City Gate and is required by the LDC to switch to its Alternate Fuel.

“**FERC**” shall refer to the Federal Energy Regulatory Commission. This federal agency is responsible for the regulation of the production, transmission, and sale of Natural Gas and electric power, as well as the transportation of oil.

“**Firm Supply**” shall refer to service that anticipates no interruptions. Firm Supply means primary firm, non-recallable primary delivery point capacity to the City Gate and does not mean secondary Firm Supply. All Natural Gas specified herein as Firm Supply shall be primary Firm Supply.

“**Fixed Price**” shall refer to the combined price of the NYMEX commodity cost and the Basis Cost as one price that does not change for the term of the contract.

“**Indexed Price**” shall refer to the combined price of the commodity price and the Basis Cost. The commodity price will be determined monthly based on the average of the settlements for the last 3 days of the New York Mercantile Exchange (NYMEX) futures contract for delivery to Henry Hub in Louisiana for the month. A fixed Basis Cost will be added to the commodity price to determine each month’s Indexed Price (See Section 4.3 *Price*).

“**Interruptible Supply**” shall refer to a gas service that is subject to interruption at the option of the pipeline or LDC.

“**Local Distribution Company (LDC)**” shall refer to the entity responsible for receiving Natural Gas or power from the wholesale transmission system and distributing it to end use Customers. LDCs are state-jurisdictional entities whereas most transmission providers are federal jurisdictional. In addition to local delivery of energy, the LDC is typically also responsible for providing metering and billing services.

“**Lot**” shall, for the purpose of this Solicitation, refer to a grouping of Authorized Users by utility company (e.g., ConEd, NYSE&G, etc.), price/delivery (e.g., fixed, Indexed, Interruptible, etc.), and by Authorized User’s delivery locations in order to consolidate usage.

“**May**” shall denote the permissive in this IFB or a resulting Contract, clause, or specification. “May” does not mean “required”. See also “Shall” and “Must”.

“**MDQ**” shall mean maximum daily quantity of Natural Gas contracted by the Contractor to the Authorized User.

“**MMBtu’s**” shall refer to ten therms or one million British Thermal Units, also known as a Dekatherm (Dth).

“**Month**” shall refer to a period beginning at 10:00 AM on the first day of a calendar month and ending at 10:00 AM on the first day of the calendar month immediately following.

“**Must**” shall denote the imperative in this IFB or a resulting 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.

“**N/A**” shall mean not applicable or not available, used to indicate when information in a certain field on a table is not provided, either because it does not apply to a particular case in question or because it is not available. “**Natural Gas**” shall refer to a naturally occurring mixture of hydrocarbon and non-hydrocarbon gases found in geologic formations beneath the earth’s surface and used as a fuel.

“**Nomination**” shall refer to a request for delivery of Natural Gas for a specific quantity over a specific period of time or for its delivery at a specific point under a purchase.

“**NYMEX**” shall refer to New York Mercantile Exchange. The commodity exchanges based in New York where Natural Gas futures contracts and other energy futures are traded.

“**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’ Day; Thanksgiving Day; and Christmas Day.

“**NYS Vendor File**” shall refer to a centralized repository to maintain timely and reliable information on all Contractors registered to do business with the State. The Office of the State Comptroller’s Bureau of State Expenditures created the Vendor Management Unit (VMU) to manage this file.

“**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.

“**OGS Procurement Services**” shall refer to a division of the New York State Office of General Services (OGS), which is authorized by law to issue centralized, statewide Contracts for use by New York State agencies, political subdivisions, schools, libraries, and other authorized by law to participate in such contracts.

“**Operational Flow Order**” shall refer to orders which are issued by a pipeline to protect the operational integrity of the system. The Orders may restrict service or require actions by shippers to correct the problem.

“**PSC/DPS**” shall refer to New York State Public Service Commission.

“**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 a state agencies, political subdivisions and public benefit corporations (including most public authorities).

“**Procurement Services**” shall refer to a business unit of OGS.

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

“**Shall**” shall denote the imperative in this IFB or a resulting Contract, clause, or specification. “Shall” is synonymous with “required”. Also see “Must” and “May”.

“**System Alert**” shall refer to an announcement of actual or pending Events that if unchecked may result in an Operational Flow Order.

“**Tariff**” shall refer to compilation of all of the effective rate schedules for a company, along with general terms and conditions.

“**Trigger(ed)(ing) Price**” shall refer to pricing alternative made available under the Indexed Price-Firm Supply and Indexed Price – Interruptible Supply that authorizes designated agency individual to instruct the Contractor to fix the commodity price for a future month(s) based on the NYMEX Natural Gas futures price.

“**Weighted Average Price**” shall refer to the weighting of the Triggered Price and volume and the Indexed Price and volume.

1.14. 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 Funding Agency Mandatory 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

Attachment 10 – Pipeline Agreement

[Attachment 11 – EO 16 Certification](#)

1.15. Conflict of Terms

Conflicts among the documents 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;

2. BIDDER QUALIFICATIONS

2.1. Requirements

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:

Bids will only be accepted from those Bidders who have submitted an Intent to Bid packet, as advertised in the New York State Contract Reporter on February 14, 2022, before March 11, 2022 and who were notified of being qualified to submit a bid by OGS Procurement Services in relation to Solicitation 23261.

3. SPECIFICATIONS

3.1. Delivery

Subject to the terms and conditions of the contract, the Contractor agrees to sell and deliver to designated facilities, and Customers agree to purchase and accept from the Contractor the nominated quantity of MMBtu's of Natural Gas per month listed in Attachment 9 – Delivery Schedule, which reflects estimated quantities only. The Delivery Schedule, 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 the Delivery Schedule may be revised up to the date of the Bid opening to accommodate the addition and/or deletion of Delivery Points and quantities. 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 Attachment 9 - Delivery Schedule. All revisions are announced via the New York State Contract Reporter.

Any Authorized User, which has not filed a requirement with OGS as of the date of the Bid and requests a Contractor to add a location to the Delivery Schedule, shall be eligible to be added to the Delivery Schedule as a new account at the Contractor's option. This being 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 award. Contractors must notify OGS of any new business created from Authorized Users request for delivery so that OGS Procurement Services can make adjustments to the Delivery Schedule to capture these new accounts. See Section 6.20, New Accounts in this Solicitation.

The sale and delivery of gas by the Contractor shall be on an interruptible or firm basis, as specified within each Lot (See Attachment 9 – Delivery Schedule). Where interruptible gas is specified, the Contractor shall not be liable to the State for any interruption or Curtailment of deliveries of Natural Gas to the State where satisfactory justification for such action can be provided in writing to OGS Procurement Services.

3.2. Customer and Contractor Responsibilities

Customer Responsibilities

1. Customers with Interruptible Supply will be responsible for placing Nominations for Natural Gas supply to the Contractor "in writing" not less than five (5) Business Days prior to the first day of the month for which supply is needed; or at a later date if mutually agreed upon by Contractor and the Customer.
2. Customer will be responsible for supplying usage data to Contractor on an as-needed basis as required by the Contractor in order to serve Customer under the utility/LDC.
3. Customer will be responsible for supplying faxed meter reads to Contractor on an as-needed basis.
4. Customer will be responsible for having installed and utility approved remote telemeter devices, if needed.
5. Customer will be responsible for timely completion of utilities aggregation form upon receipt from Contractor for further submission to the utility company.
6. Customer will be responsible for completion of any additional documentation as deemed necessary by Contractor and utility/LDC.
7. Customer will be responsible for notifying Contractor of any changes in plant usage (significant increased usage, shutdowns/closures, Maintenance etc.) that will affect the nomination of gas usage either positively or negatively (Also see Section 3.3, Facility Closure Mandate).

Contractor Responsibilities

1. Contractor will be responsible for placing Nominations for Natural Gas supply to LDC “in writing” in accordance with utilities nomination schedule (see Appendix B, “Estimated/ Specific Quantity Contracts”).
2. Contractor, for each lot they are awarded, will be responsible to inform each Authorized User to the format and manner of billing, including whether commodity will be billed separately by the Contractor, or whether the Contractor will be billing for the utility transportation on a single bill. Contractor will provide to the Authorized User a sample of the stated billing format prior to the first invoice.
3. Contractor will be responsible for requesting faxed meter reads from the Customer locations as deemed necessary by the Contractor in order to serve Customer under the applicable utility company’s program.
4. Contractor will be responsible for executing the completion and submission of the utilities aggregation form as required by the utility/LDC.
5. Contractor will be responsible for creating a pool of Customers within the LDC’s pooled balancing program to better facilitate its daily Balancing responsibilities. This pool will consist of Customers included in this solicitation but may also include other Customers served by the successful bidder within this LDC territory.
7. Contractor is responsible for monitoring Customer accounts at all times, including but not limited to System Alerts.
8. Contractor will be responsible for requesting any usage data from the Customer locations as deemed necessary by the Contractor in order to serve Customer under utility/LDC’s program.
9. Contractor will be responsible for completion of any additional documentation as deemed necessary by the OGS Procurement Services or utility/LDC.
10. Contractor will be responsible for any and all daily/end-of-month “cash outs” as imposed by LDC, if applicable.
11. Contractor will adhere to MDQ procedures as outlined in each utility companies Tariff established through the NYS Public Service Commission.
12. Contractor shall bill Customer for actual quantities of Natural Gas consumed.
13. Contractor shall be required to deliver 100% of the Authorized Users’ Natural Gas requirements on a daily basis and shall be required to balance deliveries to conform to actual consumption by Lot on a daily basis. For Interruptible Supply, refer to Section 1.5, Contract Types.
14. Contractor must be compliant with all Federal, State, and NYS Public Service Commission filed and approved utility Tariffs governing each individual utility territory bid, including but not limited to load aggregations, Balancing, and individual utility programs.
15. Contractor will be responsible for notifying the OGS Procurement Services contract administrator immediately of any difficulties obtaining meter reads from individual facilities.
16. Contractor, where required (all Lots excluding Interruptible Supply), will secure adequate upstream capacity (and storage, when applicable) to ensure that service is “firm”.
17. Contractor will be responsible to own the balance control account for all agencies listed herein, in accordance with individual utility/LDC when applicable.
18. Contractor(s) in Liberty Utility territory will be responsible for providing an annual audit of the bank balance cash-out report from the utility.

3.3. Facility Closure Mandate

If as the result of an Executive or Legislative mandate that requires the closure of a facility in any Fixed Price – Firm Supply or Indexed Price – Firm Supply Lot(s) awarded under this Solicitation, the sole and exclusive remedy for the remainder of that facility’s contract requirement shall be settled as follows:

Forward Triggered Price Volumes:

All remaining Trigger Priced months shall be priced at the difference between the Weighted Average of Trigger Price plus contract Basis Cost minus the Forward Natural Gas Cost plus the Forward Basis Price times the Triggered volume. The difference, whether positive or negative, shall be credited or debited accordingly by the Contractor to the Customer on that month’s invoice.

Non -Triggered Price Volumes:

Shall be priced at the difference between the contract Basis Cost minus the Forward Basis Price times the remaining monthly contract quantity. The difference, whether positive or negative, shall be credited or debited accordingly by the Contractor to the Customer on that month's invoice.

Note: In the event the Forward Basis Price publication does not quote a City Gate basis, the Forward Basis Price shall be calculated by using the quote for the immediate upstream pipeline trading point (i.e. Columbia Gas Appalachia, Dominion South Point) plus the Pipeline Firm Transportation rates in effect if the facility was receiving Firm Supply or in the case of the facility receiving Interruptible Supply the lesser of the Pipelines Interruptible Tariff rate or the forward capacity release market for the remaining contract period.

3.4. Customer Training

Contractor is responsible for conducting training sessions of appropriate length for critical Customer personnel. Such sessions shall explain the mechanism of the transportation gas contract and shall be scheduled as requested by the Customer.

3.5. Natural Gas Quality and Measurement

All Gas delivered by Contractor shall meet the pressure, quality and heat content requirements of the Receiving Transporter. The unit of quantity measurement for purposes of this Contract shall be one MMBtu dry. Measurement of Gas quantities hereunder shall be in accordance with the established procedures of the Receiving Transporter.

3.6. Hedging/Forward Triggering

OGS Energy Procurement has designated the following state agency accounts as being eligible for triggering: Lots: 5, 17, 27, 29, 42, 55, 57, 62, 64, and 75.

Contractor will endeavor to lock in and confirm a Triggered NYMEX price only if Authorized User and Contractor agree on a proposed Triggered Price and Authorized User provides Notification to Contractor prior to 12:00 Noon on the applicable NYMEX contract expiration date of its desire to purchase at the agreed-to proposed Triggered Price. The contract price shall include Basis Cost plus the Triggered Price for any volumes Triggered. "Notification" shall mean transmission between Authorized User and Contractor by facsimile, email, or recorded telephone call, and shall be communicated by Authorized User to Contractor's agreed-to designated contact listed in the Bidder's Attachment 5 -Bidder Information Questionnaire. Authorized User agrees that such Notification shall constitute Authorized User's firm irrevocable offer to purchase (i.e., "lock in") at the proposed Triggered Price for the term, volume, and fixed price as set forth in the Notification. If Contractor accepts such offer, Contractor will confirm such Notification by returning a Trigger confirmation to Authorized User via facsimile or e-mail. Triggered volumes are the first volumes delivered to Authorized User during the month. To provide Authorized User with a Triggered Price, Contractor will take positions in the Natural Gas futures market. Except for the provisions of Section 3.3, Facilities Closure Mandate, Authorized User agrees to pay any damages suffered by Contractor with respect to such positions as a result of or in connection with Authorized User terminating the Contract before the end of the term. The pricing provision(s) otherwise applicable under the Contract will be used for non-triggered volumes. There shall be no tolerance on over-use or under-use of Triggered volumes, (i.e., swing tolerance for Triggered volumes is 0%). Force majeure shall not affect Authorized User's responsibility for losses related to Triggered volumes described above. To the extent any Triggered Price gas is not consumed in the month for which it was Triggered, Authorized User shall be liable to Contractor for any losses incurred by Contractor as a result of Authorized User's failure to consume such Triggered Price gas during such month. Such losses shall be equal to the positive difference, if any, of such Triggered Price minus Basis Cost (per applicable Lot) minus the monthly NYMEX expiration price (per Dth) for such gas which Authorized User fails to consume; provided that Contractor shall credit Authorized User for any negative difference.

3.7. Calculation of Monthly Price for Triggered Accounts

For accounts affected by triggering (See Section 3.6 *Hedging/Forward Triggering*), the monthly price shall be calculated using the following formula.

“MP = $[\Sigma (T * V) + \text{Indexed Price} * (M - \Sigma (V))] / M$ ” where:

- **MP** = Monthly Price
- **T** = Triggered Price plus Basis Cost of each individual transaction
- **V** = Triggered Volume of each individual transaction
- **$\Sigma (V)$** = Total triggered volume for all transactions
- **M** = Total monthly usage at the facility
- **Indexed Price** = Average of last 3 day settlements of NYMEX + Basis Cost

As an example, if 400 dekatherms were triggered at \$4.20 per dekatherm, a second 400 dekatherms were triggered at \$3.80, the Index Price was \$4.10 per dekatherm, and the total monthly usage at the facility was 1000 dekatherms, then the monthly price would be calculated as follows:

$$\begin{aligned} \text{MP} &= [((400 \times \$4.20) + (400 \times \$3.80)) + (\$4.10 \times (1000 - (400 + 400)))] / 1000 \\ \text{MP} &= [(3200) + (820)] / 1000 \\ \text{MP} &= \$4.02 \text{ per dekatherm} \end{aligned}$$

3.8. Utility Classified Interruptible Transportation Rate

INDEXED PRICE – FIRM SUPPLY

Locations which are utility classified as interruptible transportation rate when facility is receiving Firm Supply and the facility is required by the LDC to switch to an alternative fuel (an Event), the Contractor shall during such Event, establish/calculate the excess City Gate gas as the quantities of gas that were published in the Invitation for Bids divided by the number of days in the month and multiplied by the number of days of the Event. When the interruption last less than 24 hours, the Contractor shall determine the excess city gas quantities on a prorated hourly basis.

Note: Contractor shall indicate on the invoice for supplies whether the sale of excess City Gate gas supplies occurred upstream of the City Gate or at the City Gate, and shall provide the Customer with documentation of the sale.

TRIGGERED / HEDGED ACCOUNTS WITH UTILITY INTERRUPTIBLE SUPPLY - OGS ENERGY PROCUREMENT DESIGNATED STATE AGENCY ACCOUNTS ONLY.

In the event an eligible designated agency's Triggered/hedged account is interrupted by the utility company the following process will apply:

FOR NATIONAL GRID, NYSEG & NATIONAL FUEL TERRITORIES - LOTS: 17, 27, 29, 42, 55, 57, 62, 64, and 75.

Sales Upstream of the City Gate

• **November through March:** During these months, the price for the excess City Gate gas will equal the difference between the Triggered (contract) Price (for LDC nominated amount) and the price reported by Platt's Gas Daily Price Survey Midpoint for the Event day using the nominated under Natural Gas Spot Prices for Dominion North Point. If that is not posted, the Dominion South Point will be used.

• **April through October:** During these months, the excess City Gate gas will equal the difference between the Triggered (contract) Price (for LDC nominated amount) and the price reported by Platt's Gas Daily Price Survey Midpoint for the Event day under Natural Gas Spot Prices for Dominion South Point.

Sales at the City Gate

• **November through March:** During these months, the price for the excess City Gate gas will equal the difference between the Triggered (contract) Price (for LDC nominated amount) and the price reported by Platt's

Gas Daily Price Survey Midpoint for the Event day under Natural Gas Spot Prices for Dominion North Point plus DTI Firm transportation variable and fixed charges plus losses to the City Gate in effect at the time of the Event. If that is not posted, the Dominion South Point will be used.

- **April through October:** During these months, the price for the excess City Gate gas will equal the difference between the Triggered (contract) Price (for LDC nominated amount) and the price reported by Platt's Gas Daily Price Survey Midpoint for the Event day under Natural Gas Spot Prices for Dominion North Point plus DTI Firm transportation variable and fixed charges plus losses to the City Gate in effect at the time of the Event.

- Note: City Gate sales shall include any LDC that has DTI primary Delivery Points.

FOR CON EDISON TERRITORY AND CENTRAL HUDSON TERRITORY - LOT: 5.

Sales Upstream of the City Gate

- During any month the price for the excess City Gate gas will equal the difference between the Triggered (contract) Price (for LDC nominated amount) and the price reported by Platt's Gas Daily Price Survey Midpoint for the Event day under Natural Gas Spot Prices for Transco, Zone 6, Non-NY for Central Hudson, and Transco-NY for Con Edison.

Sales at the City Gate

- During any month the price for the excess City Gate gas will equal the difference between the Triggered (contract) Price (for LDC nominated amount) and the price reported by Platt's Gas Daily Price Survey Midpoint for the Event day under Natural Gas Spot Prices for Algonquin City Gate, for Central Hudson; Con Edison will be Transco-NY.

3.9. Contractor's Responsibilities During Curtailments/Interruptions

If a Customer nominates Natural Gas, and there is pipeline capacity available to the Contractor, the Contractor is expected to supply gas for the entire month and the facility is required to burn gas for the entire month. The State agrees to be interrupted only when the Contractor can provide satisfactory justification of interruptions or Curtailments that occur on pipelines or at the LDC level, as a result of demand for transportation service exceeding capacity.

Contractor shall be responsible for notifying both Customer and OGS Procurement Services, in writing via fax or e-mail, of any pipeline Curtailments as soon as possible after Contractor becomes aware that a Curtailment will take place.

Contractor is required during periods of upstream pipeline interruptions, to contact LDC for the availability of excess City Gate supply, enabling facility to purchase gas directly from the LDC. Price shall be approved prior to purchase by the individual Customer. However, if there are LDC and/or pipeline Curtailment of firm services, to the extent that the Contractor has Firm Supply and firm transportation available at the City Gate delivery shall be made pro-rata to all the Contractor's firm Customers prior to purchasing directly from the LDC.

As a result of a scheduled and confirmed Nomination on the delivering upstream pipeline(s) being interrupted which prevents City Gate delivery of Customer's gas, Contractor shall use all commercially reasonable efforts to secure replacement gas for the Customers. Such efforts shall include, but not be limited to, supplies on alternate pipeline serving the affected LDC requests to other Contractor's, energy Brokers, and requests to the affected LDC for the availability of excess system supply gas. (See additional information in Section 1.5, Contract Types).

If gas should flow due to Contractor's failure to notify the Customer and OGS Procurement Services of Curtailment and Customer purchases gas directly from the utility, the Customer will have sufficient justification to apply a charge-back, which shall be the difference between the Contract Natural Gas prices versus the utility supplied price, including any LDC imposed charges.

If Customer nominates “0” or at the time of the monthly Nomination and has notified Contractor of a scheduled plant shutdown/maintenance during said month, and gas flows, Contractor will be liable for all added cost incurred caused by failure to manage Customer’s account.

Contractor is required to notify Customers and OGS Procurement Services of lifting of Curtailment/interruption as soon as possible and to enable gas flow at the next available opportunity. Contractor will be liable for any charges caused by Contractor’s failure to inform Customer and LDC, if applicable, of lifting of Curtailment/interruption.

Neither party shall be entitled to the benefit of the provision of Force Majeure to the extent performance is affected by the Curtailment of interruptible or secondary firm transportation unless primary, in-path, firm transportation is also curtailed.

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 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) 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. Price

Pricing will be collected using Attachment 1 – Pricing in accordance with the Instructions tab listed within Attachment 1 - Pricing. Bid pricing will limit the dollar amount that a Bidder enters to four (4) decimal places. Negative numbers can be accepted. Bidders are not required to bid on all Lots. Bidders may bid on as few or as many Lots as they choose. For Lot 16 & 29, Bidders may bid on Lot A and Lot B, either, or none.

Attachment 1 – Pricing may be emailed prior to the scheduled bid opening date and time in lieu of being included in a Bidder's physical bid submission. If submitting Attachment 1 - Pricing by email, the file should be "encrypted by password" prior to submission and that password should be provided as part of a Bidder's bid submission in lieu of the printed pricing (Section 4.5.2 (b)). The email should be sent from a Bidder's company email and the subject line should state "Solicitation 23261 Bid Pricing Attached". Where a Bidder's physical bid is received by OGS prior to the scheduled bid opening date and time, but the email including their Attachment 1 – Pricing is received after the bid opening the bid shall be handled in accordance with Appendix B, *Late Bids*. To "encrypt by password" the Attachment 1 – Pricing file:

1. Select File > Info.
2. Select the Protect Workbook box and choose Encrypt with Password.
3. Enter a password in the Password box, and then select OK.
4. Confirm the password in the Reenter Password box, and then select OK.

Prices shall be bid as either Fixed Price or Indexed Price as specified in each Lot (See Attachment 1 – Pricing).

Fixed Price

Price increases are not applicable for those Lots marked as Fixed Price. However, price decreases offered by the Contractor are allowed at any time. Monthly indexed commodity prices do not apply to those Lots identified as Fixed Price.

Indexed Price

For Lots indicated as Indexed Price, the Bidder shall include only Basis Cost in the bid price. Indexed Prices shall be calculated monthly by taking the average of the settlements for the last three (3) days of the NYMEX futures contract for delivery to the Henry Hub in Louisiana for the month and adding the Basis Cost. Prices will be carried to the 4th decimal place. While the commodity price may increase or decrease from month to month, increases to Basis Costs are not allowed. However, Basis Cost decreases offered by the Contractor are allowed at any time.

NOTE: Settlement of the NYMEX shall mean the settlement price of the NYMEX futures contract.

As an example, for March of 2022 the Indexed Price would be calculated as follows:

March of 2022 Natural Gas Futures Contract (Closing Date 2/24/2022)

- Settlement Price on 2/24/2022 = \$4.5680
- Settlement Price on 2/23/2022 = \$4.6230
- Settlement Price on 2/22/2022 = \$4.4980
- Average of the Settlement Prices on the last three days of the contract = \$4.5630
- Indexed Price = \$4.5630 + (Basis Cost)

4.4. 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.

Please note that submitting a Bid by fax or email is not acceptable with the exception of submitting Attachment 1 – Pricing.

Situations susceptible to Disqualification may include:

1. E-mail or facsimile Bid submissions are not acceptable, and
2. 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 USB 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 their Bids prior to Bid submission. A Bid that fails to conform to the requirements of the Solicitation may be considered non-responsive and may be rejected.

4.5. Content

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) if not submitting by email per Section 4.3 Price;
 - 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. Completed Form EEO100, Equal Employment Opportunity Staffing Plan (PDF);
 - j. Attachment 10 – Pipeline Agreement;
 - k. Attachment 11 – EO 16 Certification.

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 1 – Pricing (print out of Excel file pricing) if not submitting by email per Section 4.3, Price
 - c. Completed Attachment 2 – NYS Required Certifications with original ink signatures;
 - d. Completed Attachment 3 – Encouraging Use of NYS Businesses;
 - e. Proof of compliance with Attachment 4 – Insurance Requirements;
 - f. Completed Attachment 5 – Bidder Information Questionnaire;
 - g. Completed Attachment 6 – Bidder Submission Checklist;
 - h. Completed ST-220CA, Contractor Certification, notarized with original ink signatures;
 - i. Completed Form EEO100, Equal Employment Opportunity Staffing Plan;
 - j. Attachment 10 – Pipeline Agreement;
 - k. Attachment 11 – EO 16 Certification.

Also, please note that in the case of discrepancies between paper copies and USB flash drive submissions of the documents required in both formats, the electronic USB 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.

4.6. 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 (IFB #23261)
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 1.6 - *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

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. Bid Deviations

Bids must conform to the terms set forth in the Solicitation. As set forth in 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. 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) 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.

4.10. 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>.

4.11. 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.

4.12. Firm Offer

Bids must remain an effective offer, firm and irrevocable, for at least 60 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 60 calendar-day period until either tentative award of the Contract by OGS is made or withdrawal of the Bid in writing by the Bidder.

4.13. 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.

4.14. 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

For all Lots with the exception of Lots 16 and 29, Award shall be made by Lot to the responsive and responsible pre-qualified bidder with the lowest cost for each Lot.

For Lot 16, award will be made to the lowest responsive and responsible pre-qualified bidder as follows:

1. Determine the Bidder(s) with the lowest cost for Fixed Price (Lot A) and Indexed Price Supply (Lot B).
2. Determine the lowest cost between the Bidder(s) determined in Paragraph 1 using an evaluation that compares the total cost of the index price using the futures pricing at the time of bid opening to the fixed price submission.
3. Award the Lot to the Bidder with the lowest cost as determined in Paragraph 2.

For Lots ~~16 and~~ 29, award will be made to the lowest responsive and responsible pre-qualified bidder as follows:

1. Determine the Bidder(s) with the lowest cost for Firm Supply (Lot A) and Interruptible Supply (Lot B).
2. Determine the lowest cost between the Bidder(s) determined in Paragraph 1 using an evaluation that takes into consideration factors such as fuel costs, alternate fuel costs, transportation charges, historical volumes, and average of historical interruptions.
3. Award the Lot to the Bidder with the lowest cost as determined in Paragraph 2.

5.2. Notification of Award

Tentative award of the Contract 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

- A. Base Term. The Contract shall be in effect for a term of September 1-9, 2022 through August 31, 2023. The Contract term shall commence after all necessary approvals and shall become effective upon the date of OSC approval of the final executed documents.

- B. Extensions. At the State's option, and subject to the approval of OSC, the Contract may be extended for (2) two 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 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, *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 3 months upon notice to the Contractor with the same terms and conditions as the original Contract and any approved modifications. With the concurrence of the Contractor, the extension may be for a period of up to 6 months in lieu of 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.

6.4. Price Structure

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*.

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.

6.5. 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).

6.6. Purchasing Card Orders

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.

6.7. 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:

1. Contractor Name
2. Contractor Billing Address
3. Contractor Federal ID Number
4. NYS Vendor ID Number
5. Account Number
6. NYS Contract Number
7. Name of Authorized User indicated on the Purchase Order
8. NYS Agency Unit ID (if applicable)
9. Authorized User's Purchase Order Number
10. Order Date (if applicable)
11. Invoice Date
12. Invoice Number
13. Invoice Amount
14. Product Descriptions
15. Unit Price
16. Quantity
17. Unit of Measure
18. Dates of Service
19. For Authorized Users receiving service from Liberty Utility Contractor shall provide an audit of the annual bank balance cash-out and the cash-out (credit or debit). The audit shall be performed on an annual basis. Contractor shall provide the audit with the Authorized User's first invoice in the calendar year immediately following the audited service. (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>.

6.8. 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.

6.9. NYS Financial System

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 may be implementing additional PeopleSoft modules 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/>.

6.10. 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.

6.11. 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*.

6.12. 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 30th, for sales July 1st through December 31st, and due July 30th, 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 (MWBEs), 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.

6.13. Contractor Requirements and Procedures for Business Participation Opportunities for NYS 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 & Services)

1. The Contractor shall complete and shall require each of its subcontractors to complete a Workforce Audit on a quarterly basis throughout the term of this Contract, by the 10th day of April, July, October, and January. 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. Contractor shall coordinate with its subcontractors to ensure that all workers associated with this Contract are properly counted and reported. To prepare the report, Contractor and its subcontractors shall use the NYS Contract System Workforce Audit Module found at the following website: <https://ny.newnycontracts.com>.
2. Separate audits shall be completed by Contractor and all subcontractors utilized on this contract and the Contractor is responsible for ensuring timely submission of the Workforce Audit by their 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 complete 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 complete the Workforce Audit 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 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>

Vendor must scroll down to the section titled COMMODITY & SERVICE CONTRACTS and use the appropriate forms under this section only.

6.14. 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 Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or VeteranDevelopment@ogs.ny.gov to discuss methods of maximizing participation by SDVOBs on the Contract.

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

6.15. 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://ogs.ny.gov/greenny/>. 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.

6.16. 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.

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.

6.17. 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. The ST-220-TD can be found at 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.

6.18. 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://online.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.

6.19. 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.

6.20. 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 Schedule to capture these new accounts. All cases shall require Contractors to notify both Authorized User and OGS Procurement Services of any locations not originally on the Delivery Schedule, within thirty (30) days after the first delivery is made.

6.21. Drug and Alcohol Use Prohibited

For reasons of safety and public policy, in any Contract resulting from this Solicitation, the Contractor's personnel shall not be impaired by alcohol or drugs of any kind in the performance of the Contract.

6.22. 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.

6.23. Sales Title/Transfer Point

Contractor shall be deemed to exercise or continue in control and possession of the gas being delivered and responsible for any damage or injury caused until gas has been delivered at the LDC City Gate (Delivery Point). Also, Contractor shall be responsible for the coordination and scheduling of transportation volumes including completing all arrangements for transportation services for delivery of the Natural Gas to existing meter at each Customer.

6.24. Transportation Charges

Unless otherwise stated, the Contractor shall pay all costs associated with the transportation of the gas to the LDC City Gate (see Section 1.5(C)(4), Contract Types). The Customer shall enter into a separate agreement

with the LDC and pay all costs associated with the transportation of gas from the LDC City Gate to the existing meter at each Customer.

6.25. Public Service Commission Retail Access Business Rules

The Contractor shall abide by the New York State Public Service Commission (PSC) Uniform Retail Access Business Practices Cases and Tariffs including all updates/revisions during the term of the Contract for all Natural Gas transactions and practices under this Contract. This includes any PSC provisions covering “Single Billing”. A copy of the PSC Uniform Retail Access Business Practices is available for download from the PSC web page: <http://www.dps.ny.gov/>.

6.26. Rebates

OGS Procurement Services has the right to determine the disposition of any rebates, settlements, restitution, liquidated damages, etc. which arise from the administration of this Contract.

6.27. Appendix B Modifications

The following Appendix B clauses are hereby amended as follows:

Section 43 (Termination) subparagraph (b) (For Convenience) is hereby deleted in its entirety.