



**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

BID OPENING DATE: 03/16/2023 TIME: 1:00 P.M. EST INVITATION FOR BIDS NUMBER: 23283	TITLE: Group 05800 Liquefied Petroleum Gas (LPG) Propane (Statewide) Classification Codes: 15 – Fuels and Lubricants
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CONTRACT PERIOD: July 1, 2023 – June 30, 2025

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

Wendy Nieves Contract Management Specialist Telephone No. (518) 486-7313	Bryant T. Kirk Contract Management Specialist 2 Telephone No. (518) 402-3021
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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>
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Legal Business Name of Company Bidding:

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

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

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

WE ARE NOT BIDDING AT THIS TIME BECAUSE:

FOR PROCUREMENT SERVICES USE ONLY

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

Bidder Certification and Affirmation

Bidder certifies and affirms as follows:

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

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

Print Full Bidder Entity Name

By: _____
Signature of Person Authorized to Legally Bind the Bidder

Print Name of Signatory

Print Title of Signatory

Date

RETURN THIS PAGE AS PART OF BID

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Appendix B – *General Specifications* (April 2016)
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1 INTRODUCTION

1.1 Overview

This Solicitation is issued by the New York State (“NYS”) Office of General Services (“OGS”), Procurement Services for Liquefied Petroleum Gas (LPG) - Propane as specified herein for all Authorized Users eligible to purchase through this Solicitation.

This Solicitation outlines the terms and conditions and all applicable information required for submitting a Bid. Bidders should pay strict attention to the Bid submission date and time to prevent disqualification. Bidders are strongly encouraged to read the language of this Solicitation thoroughly and to precisely follow the instructions included in the Solicitation and all attachments.

The resulting commodities Contract(s) under this Award will be centralized Contracts based on filed requirements. This is a statewide Solicitation and resulting Contract(s). It is the State’s intent to award Contract(s) by Grand Total Bid Per County on the basis of lowest price to responsive and responsible Bidder(s), who are able to meet the terms and conditions of this Solicitation, and who offer the best overall pricing in accordance with the “Method of Award” clause described herein. The awarded Bidder(s) will be granted a Contract for a two-year term, with renewal options as further described herein. Detailed information on the procurement process is set forth in the Method of Award section of this Solicitation.

There are no M/WBE or SDVOB goals for this Solicitation.

1.2 Scope

This Solicitation will be conducted as a competitive sealed bid.

This Solicitation and any resultant Contract(s) are intended to provide State and Non-State Agencies with a method to procure Liquefied Petroleum Gas (LPG) - Propane by 20 LB cylinders (4.7 gallons), 34 LB cylinders (7.9 gallons), 100 LB cylinders (23.6 gallons), and Bulk gallons, which includes tank and regulator installations, testing and inspections provided by the Contractor, as set forth in the *Price* clause of this Solicitation.

This Solicitation is based on the Liquefied Petroleum Gas requirements submitted to OGS by Authorized Users of the NYS Contract. For purposes of this Solicitation, 56 of the 62 counties in New York State had filed requirements, and the following six (6) counties had no filed requirements: Allegany, Bronx, Kings, New York, Queens, and Richmond. The specific users, counties, and tank types are listed in the Delivery Schedules. See Attachments 10 and 11, Delivery Schedule – State Agencies and Delivery Schedule – Political Subdivisions, Local Governments & Other Eligible Non-State Agencies respectively.

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

1.3 Estimated Quantities

A Contract resulting from this Solicitation shall be an estimated quantity Contract. The estimated quantities are based on requirements submitted to OGS by Authorized Users to purchase from the resulting Contract. These Authorized Users have agreed not to enter into any other contracts for liquefied petroleum gas - propane they filed for during the resulting Contract period and will purchase all their liquefied petroleum gas - propane requirement needs from awarded Contracts. Also see clause 6.15 Delivery Schedule of this Solicitation. 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 volume by gallons of the award for this Solicitation, based on historical purchases under previous awards, is approximate 4,412,349 gallons 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.

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:

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

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

1.4 Key Events/Dates

EVENT	DATE	TIME
IFB Release	2/6/2023	N/A
Intent to Bid Due Date	2/28/2023	5:00 PM EST
Closing Date for Bidder Questions	2/22/2023	5:00 PM EST
OGS Procurement Services' Responses to Bidder Questions	3/3/2023 (tentative)	N/A
Bid Opening / Due date for Bids	3/16/2023	1:00 PM EST
Notice of Tentative Award:	4/11/2023	N/A
Contract Approval Date / Award Publish Date	Upon OSC Approval	N/A

1.5 Intent to Bid

Bidders are required to submit an Intent to Bid. A Bidder should indicate its intent to bid by sending an e-mail titled "INTENT TO BID – 23283 – [BIDDER NAME]" to ogs.sm.ps_CM_FleetFuelRoads@ogs.ny.gov on or before the date and time indicated in the Key Events/Dates section, and the Intent to Bid must be submitted prior to the Bid Opening Date. Failure to submit an Intent to Bid on or before the date and time indicated in the Key Events/Dates section or a complete Intent to Bid may result in your company's bid being disqualified from an award. The e-mail should indicate the Bidder's company name, a contact person with contact information, and the following documents.

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

1. A signed Attachment 12 – Intent to Bid form;
2. NYS Vendor Responsibility Questionnaire (if hard copy) or a copy of the certification (if filed online) certified within the last 6 months;

3. NYS Workers Compensation and NYS Disability Benefits Insurance coverage as referenced herein;

1.6 Pre-Bid Conference

There is no pre bid Conference for this Solicitation.

1.7 NYS Contract Reporter

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

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

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

1.8 Bidder Questions

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

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

1.9 NYS Comptroller Approval

In accordance with Section 112 of the State Finance Law, a Contract resulting from this Solicitation shall not be valid, effective or binding upon the State until such Contract has been approved by the Office of the New York State Comptroller (“OSC”). Purchase orders or other procurement transactions issued under such Contract(s) may also be subject to OSC approval.

1.10 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 23283 MWBE or SDVOB*””

INTEREST_COMPANY NAME to ogs.sm.ps_cm_fleetfuelroads@ogs.ny.gov on or before the date and time on Bidder Questions are to indicated in Section 1.4 Key Events/Dates. 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.

1.11 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/>

1.12 Definitions

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

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

"Authorized User(s)" as defined in Appendix B.

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

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

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

"Customer" shall mean an Authorized User that participates in the contract.

“**Delivery**” shall be the act of taking an ordered product to a person or place. Refer to the “*Product Delivery*” clause in this Solicitation 6.11.

“**Delivery Point**” shall mean the point where Liquefied Petroleum Gases (LPG) – Propane exits one system and enter another.

“**Grand Total Bid Per County**” shall be the total of the number of gallons requested in a county for each size/type of LPG cylinder, multiplied by the price offered by the Bidder for each of the requested sizes. The sum of all extended prices in a county added together shall result in the Grand Total Bid Per County. In the example to follow, entering a price per gallon for all 4 cylinder types with a requirement would be considered a complete bid for Albany County. The quantities and prices are only an example. Please refer to Attachment 1 for actual quantities required in the bid.

Example:

County	LPG - 20 lb./cyl (4.7 gal)			LPG - 34 lb./cyl (7.9 gal)			LPG - 100 lb./cyl (23.3 gal)			LPG - Bulk (gallons)			Grand Total Bid per County
	Estimated Quantity (gallons)	Price per Gallon	Extended Price	Estimated Quantity (gallons)	Price per Gallon	Extended Price	Estimated Quantity (gallons)	Price per Gallon	Extended Price	Estimated Quantity (gallons)	Price per Gallon	Extended Price	
Chautauqua	125	\$ 3.1200	\$390.00	250	\$ 2.8902	\$722.55	600	\$ 3.0000	\$1,800.00	22,700	\$ 2.5897	\$58,786.19	\$61,698.74

“**Human Needs Customer**” shall mean a high priority customer, such as residences, hospitals, and nursing homes, for which failure to get propane could be life threatening.

“**Liquefied Petroleum Gas (LPG)**” is also known as Propane.

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

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

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

“**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 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.

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

“**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, formerly known as New York State Procurement (“NYSP”) and Procurement Services Group (“PSG”).

“**Prompt Delivery**” shall refer to any delivery that is completed within the Contractor’s specified guaranteed delivery time.

“**Prompt Will-call**” shall refer to the time an Authorized User places an order.

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

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

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

1.13 Appendices and Attachments

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

Appendix A – Standard Clauses for NYS Contracts (October 2019)

Appendix B – General Specifications (April 2016)

Appendix C – Federal Emergency Management Agency Term 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 – Certification Under Executive Order No. 16

Attachment 10 – Delivery Schedule – State Agencies

Attachment 11 – Delivery Schedule – Political Subdivisions, Local Governments &
Other Eligible Non-State Agencies

Attachment 12 – Intent to Bid

1.14 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 C, Federal Emergency Management Agency Term and Conditions
4. Appendix B, General Specifications
5. Attachment 1 – Pricing;
6. Attachment 2 – NYS Required Certifications;
7. Attachment 3 – Encouraging Use of NYS Business;
8. Attachment 4 – Insurance Requirements;
9. Attachment 5 – Bidder Information Questionnaire;

10. Attachment 6 – Bidder Submission Checklist;
11. Attachment 7 – Bidder Questions Form;
12. Attachment 8 – Report of Contract Usage
13. Attachment 9 – Certification Under Executive Order No. 16;
14. Attachment 10 – Delivery Schedule – State Agencies;
15. Attachment 11 – Delivery Schedule – Political Subdivisions, Local Governments & Other Eligible Non-State Agencies;
16. Attachment 12 – Intent to Bid;

2 BIDDER QUALIFICATIONS

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

EITHER 1a OR 1b:

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

OR

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

AND ALL OF THE FOLLOWING:

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

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

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

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

4. The Bidder's source of supply is with a reputable oil refiner either directly or through the refiner's authorized distributor. Bidder should supply a letter, agreement or certification executed by the refiner or distributor that shows that the Bidder has an agreement with the refiner or distributor and will be supplied with sufficient quantities of the fuel type(s) referenced in this Solicitation to satisfy the Bidder's obligations for

any resultant contract with the State. New York State reserves the right to request updated supplier certification at any time during the contract.

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

6. Vendors furnishing fuel to New York State must be registered in accordance with applicable provisions of the New York State Tax Law amendments effective September 1, 1998 or as may be amended.

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

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

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

- Satisfactory evidence that a Bidder has maintained an organization capable of performing the work specified herein, if requested, through submission of a Dun & Bradstreet Business Information Report or other equivalent evidence.
- Evidence of business establishment with adequate inventories of the product(s) offered, and capacity to process and ship large orders to the awarded Region(s). The Commissioner may require a certificate from the Bidder showing the number of years the Bidder has been active in supplying the product(s) offered and the size and location of the inventories regularly maintained.
- References that demonstrate the ability of the Bidder to perform jobs similar in scope to the size, nature and complexity of the applicable Lot/County.
- Documentation to demonstrate a Bidder's ability to service the county(ies) on which they bid in order to meet the delivery requirements set forth in Section 6.13 *Product Delivery*.

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

3 SPECIFICATIONS

3.1 Product and Tank Requirements

The Bidder guarantees that the product supplied will meet or exceed the ASTM Specifications for Liquefied Petroleum (LP) Gases, Designation D1835 or latest revision thereof, and the New York State Uniform Fire Prevention and Building Code with the latest revisions approved by the Code Council.

Should the resulting Contractor determine that an agency-owned tank is not in compliance with New York State and Federal regulations at any time within the contract period, then the agency, at its discretion, can either replace its tank, or the Contractor shall provide and install a suitable and acceptable replacement liquefied propane tank(s) as appropriate for the duration of the contract term. The Contractor

is not required to supply or install a replacement tank that is above and beyond normal business costs. Contractor is expected to take reasonable steps to protect the property and grounds.

3.2 Fill and Vent Requirements/Vapor Recovery Systems

Agencies must ensure that fill and vent equipment meets NYS Standards. Contractors have the responsibility for reporting faulty or non-compliant equipment to the end users and the appropriate NYS regulatory agencies.

3.3 Petroleum Transfer Requirements

Contractor must be prepared, at all times, to make prompt delivery as ordered. In State declared emergencies, fuel must be delivered within four (4) hours of notification.

Normal deliveries are considered to be Monday thru Friday. Saturday/Sunday deliveries are to be made on an emergency basis (and not a regular basis) ONLY, unless agreed upon by both Authorized User and Contractor.

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

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 Pricing Page Instructions

Please reference Attachment 1 – Pricing for detailed instructions on how to submit pricing.

A Bidder shall submit its proposed pricing by County contained in Attachment 1 – Pricing in the “Price Page” tab. The price per gallon is based on OPIS’s *Oil Price Daily’s* Propane Pipeline Selkirk posted price as of November 30, 2022. Attachment 1 – Pricing will limit the number of decimal places entered for Bidder’s price; to four (4) decimal places.

4.4 Format of Bid Submission

- A. The complete Bid package must be received by OGS Procurement Services by the date and time of the Bid opening. Late Bids shall be handled in accordance with Appendix B, *Late Bids*. Any Bid pricing or portions thereof submitted on USB flash drive that are incomplete or that cannot be opened/accessed may be rejected. With respect to any Bid documents in Excel format, only those cells provided for entering Bid pricing and information are to be accessed by the Bidder.

Situations susceptible to Disqualification may include:

1. E-mail or facsimile Bid submissions are not acceptable, and
 2. Absent Price Pages (Attachment 1 – *Pricing*) are not acceptable.
- B. 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.
- C. 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.
- D. 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 submission of the following completed documents:

1. Two (2) USB flash drives containing:
 - a. Pages 1 and 2 of the Solicitation (signed and scanned) (PDF);
 - b. Completed Attachment 1 – Pricing (must be submitted as an Excel file);
 - c. Completed Attachment 2 – NYS Required Certifications with original ink signatures (PDF);
 - d. Completed Attachment 3 – Encouraging Use of NYS Businesses (PDF);
 - e. Proof of compliance with Attachment 4 – Insurance Requirements (PDF);
 - f. Completed Attachment 5 – Bidder Information Questionnaire (Excel);
 - g. Completed Attachment 6 – Bidder Submission Checklist (Excel);

- h. Completed Attachment 9 – Certification Under Executive Order No. 16 (PDF);
- i. Completed Appendix C – Federal Funding Agency Mandatory Terms and Conditions (PDF);
- j. Completed Vendor Responsibility Questionnaire (completed online);
- k. Completed ST-220 CA, Contractor Certification, notarized with original in signatures (PDF);
- l. Completed Form EEO100, Equal Employment Opportunity Staffing Plan (PDF); and
- m. A Supplier Certificate or Certification from the refiner or distributor that shows Bidder has an agreement with refiner or distributor and will be provided sufficient fuel to meet contractual volume (PDF).

All documents must be completed in accordance with the instructions for the individual document, which may include an original signature or an original notarized signature. At this time, OGS cannot accept an eSignature that has been generated by software.

Documents should be submitted as an electronic copy and in the format specified in the list above for each document (e.g., PDF, Excel), following the instructions provided in this section. Electronic copies of documents must be submitted on two (2) USB flash drives, with each USB flash drive containing a complete set of the submitted documents. When submitting electronic documents, include a printed copy of page 1 of the Solicitation with the Bid (see Section 4.6 *Bid Envelopes and Packages*, below).

Electronic copies of documents provided in PDF format should be saved as an Adobe Acrobat PDF, AND THEN converted to allow for Optical Character Recognition (OCR) (see <https://www.adobe.com/acrobat/how-to/ocr-software-convert-pdf-to-text.html>).

Bidder is responsible for retaining the original documents with original signatures that have been scanned and submitted electronically until a determination of award is made. If an award is made to Bidder, the documents with original signatures shall be retained by the Bidder for a period of six (6) years after the term of the contract has ended. Bidder shall submit such documents with original signatures to OGS upon request.

In the case of discrepancies between paper copies (if applicable) and USB flash drive submissions of the documents submitted by the Bidder, the electronic USB flash drive copy shall take precedence over the paper copy.

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 #23283)
3. Bid Opening Date and Time
4. The number of boxes or packages (e.g., 1 of 2; 2 of 2)

All Bids should also include a PRINTED copy of page 1 of the Solicitation, completed with the Bidder's information. This printed copy of page 1 should be placed in the envelope with the USB flash drives.

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 1:00 P.M. EST, on or before the Bid Opening date as stated in Section 1.4 - Key Events/Dates:

State of New York Executive Department
Office of General Services
Procurement Services
Corning Tower - 38th Floor Reception Desk
Empire State Plaza
Albany, NY 12242
Attn: Bid Enclosed – Solicitation 23283

Bidder assumes all risks for timely, properly submitted deliveries. The time of Bid receipt is determined by OGS according to the timeclock 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. Refer to “Important Building Access Procedures” clause.

4.8 Important Building Access Procedures

To access the Corning Tower, all visitors must check in by presenting photo identification at the Corning Tower 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 or Customer Services (518) 474-6717 at least 24 hours prior to the visit. If no answer, leave a detailed phone message including the following information: reason for visit and/or delivering a bid, solicitation number, date and estimated time of delivery or visit, first and last name of visitor, and visitor’s cell phone number. Visitor may email customer.services@ogs.ny.gov providing the same information. Visitors who are not pre-registered will be directed to a designated phone at the Corning Tower Information Desk, where they are to call the Procurement Services Receptionist (518) 474-6262 or Customer Services (518) 474-6717 for access. The visitor will be registered at that time. Bids are not allowed to be left at the Corning Tower Information Desk. Please note that delays may occur. Building access procedures may change or be modified at any time.

4.9 NYS Required Certifications

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

4.10 Supplier Certificate/Certifications

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

The Commissioner reserves the right to investigate or make any inquiry into the capabilities of any Bidder to properly perform under any resultant Contract. See Appendix B, Participation in Centralized Contracts and Employees, Subcontractors, and Agents.

4.11 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.

4.12 Bid Opening Results

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

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

4.13 Bid Liability

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

4.14 Firm Offer

Bids must remain an effective offer, firm and irrevocable, for at least 90 calendar days from the due date, unless the time for awarding the Contract is extended by mutual consent of OGS and the Bidder. A Bid shall continue to remain an effective offer, firm and irrevocable, subsequent to such 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.

4.15 NYS Reserved Rights

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

- A. Reject any or all Bids received in response to the Solicitation;
- B. Withdraw the Solicitation at any time at the sole discretion of the State;
- C. Make an award under the Solicitation in whole or in part;
- D. Disqualify any Bidder whose conduct and/or Bid fails to conform to the requirements of the Solicitation;
- E. Seek clarifications and revisions of the Bid;
- F. Amend the Solicitation prior to the Bid opening to correct errors or oversights, or to supply additional information as it becomes available;
- G. Direct Bidders, prior to the Bid opening, to submit Bid modifications addressing subsequent Solicitation amendments;
- H. Change any of the schedule dates with notification through the NYS Contract Reporter;
- I. Eliminate any mandatory, non-material requirements that cannot be complied with by all of the prospective Bidders;
- J. Waive any requirements that are not material;
- K. Utilize any and all ideas submitted in the Bids received;
- L. Adopt all or any part of a Bidder's Bid in selecting the optimum configuration;

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

4.16 Incorporation

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

5 METHOD OF AWARD

5.1 Method of Award

Award shall be made by **Grand Total Bid Per County** to a responsive and responsible Bidder. (See **Grand Total Bid Per County** definition for additional information.) Financial review is solely based on information submitted in Attachment 1 - *Pricing*, which includes ranking of bids, and may be completed prior to Qualifications and Requirements review. "Grand Total Bid Per County" is computed in Attachment 1.

Bidder must bid all items (each size/type of cylinder) listed within a county with requirements to be considered to have a complete bid for that county.

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

Order of Award Ability:

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

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

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

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 two (2) years. The Contract term shall commence the later of July 1, 2023 or 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 three (3) years, in increments as deemed to be in the best interest of the State. Whether the optional extensions are exercised is at the sole discretion of the State. A Contractor shall retain the right to decline a Contract extension offered under this section. Any Contract extension will be under the same terms and conditions, subject to 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 three (3) months upon notice to the Contractor with the same terms and conditions as the original Contract and any approved modifications. Filed requirements and delivery schedules may be updated by OGS for any mutually agreed upon extension. With the concurrence of the Contractor, the extension may be for a period of up to six (6) months in lieu of three (3) months. However, this extension automatically terminates should a replacement Contract be issued in the interim

6.3 Price

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

Price quoted shall include:

- All applicable customs duties, taxes, licenses, charges and F.O.B. destination
- Installations of tanks and regulators
- Use of the equipment for the life of the contract
- Initial leak testing
- Operational instruction of agency personnel
- Periodic inspections of the installations to meet all safety requirements
- The cost for removal of all tanks within thirty (30) days of the contract expiration, unless the contractor is either successful in obtaining a new contract award for that location or arranges to exchange tanks with the new successful contractor (See *Product Returns and Exchanges* clause in this Solicitation.)

Price quoted does not include:

- Modifications to interior appliances to meet safety codes
- Additional piping required beyond the exterior wall of a building to bring a facility up to safety code compliance
- The addition of an appliance

Bid prices must be expressed in U.S. currency and shall be submitted up to four (4) decimal places (priced in dollars per gallon).

Any special allowances should not be included in the bid price as they cannot be considered in evaluating bids. However, if the bidder extends such allowances during the term of the Contract to Federal, State, Local Governments or to commercial users in the normal course of doing business, New York State requires that such allowances will also be available to the State in the maximum amount extended to others who contract to purchase liquefied petroleum gas under similar contractual terms and conditions.

Bid prices shall be firm except that price revisions shall be permitted in accordance with the *Price Adjustments* clause and with respect to certain taxes and duties as follows:

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

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

The bid price shall include all applicable Federal, State and local taxes, and duties, as stated in Appendix B, Taxes, of this Solicitation.

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

The price for liquefied petroleum gas under any contract to be awarded hereunder shall be increased by the amount of any after-imposed tax, unless the legislative, judicial or administrative act says

otherwise, if the Contractor states in writing that such contract price does not include any contingency for such after-imposed tax. Such increase shall be prospective only and becomes effective upon such written notice and on the effective date of the next scheduled price adjustment.

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

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

The Contractor shall promptly notify the Procurement Services Contract Management Specialist of all matters relating to any excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price for liquefied petroleum gas 30 days prior to adding to invoices.

Pricing for contract purchases shall be based on the pricing in effect at the time the Authorized User places the order (Prompt Will-Call). Authorized Users that are on automatic delivery shall be priced on the day of delivery, unless the Authorized User requests a delivery. The price shall then reflect the day of the order.

Pricing shall reflect the day of delivery for orders placed by the Authorized User that go beyond the Contractor's guaranteed delivery timeframe. For example, the Authorized User orders 500 gallons of propane on Wednesday, and requests that the delivery be made on the following Tuesday.

For situations where an Authorized User wants to place an order for an unusually large volume of fuel (i.e., 40,000 gallons or more than a truck load, or delivering over a period of time), it is important that the Contractor and Authorized User contact OGS Procurement Services. OGS's intent is for all parties to have the same expectations for delivery and price.

6.4 OPIS Posting

The OPIS Posting of "Propane Pipeline Selkirk" has been established for all counties for purposes of this Solicitation and resulting contract awards. Upon Contract award, a Contractor's pricing will be based on the posted price for Propane Pipeline Selkirk in *Oil Price Daily*.

6.4.1 Location Change or Substitution

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

6.4.2 Calculation Change or Substitution

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

6.4.3 Product Change or Substitution

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

6.5 Price Adjustments/Revisions

Contract prices shall be firm except that price revisions will be permitted on a monthly basis, in accordance with the following procedure:

Price revisions (increases or decreases) to the original contract price shall be based on posted prices in Oil Price Daily (formally The Journal of Commerce), under the heading of Propane Pipeline Selkirk. The terms "Posting Day" or "Posted Price" as used throughout this Solicitation and any resulting Contract refers to the actual day the prices are posted.

The Propane Pipeline Selkirk price shown in the OPIS Oil Price Daily posting will be used to compute price revisions during the Contract period. Procurement Services will compute any price revisions by determining the difference between the Posted Price on **November 30, 2022 (\$1.2097/gal.)** and the Posted Price on the last business day of every month for the duration of the contract, beginning with the Oil Price Daily, Propane Pipeline Selkirk, NY Posted Price on June 30, 2023. The differential between these two (2) prices will be added or subtracted to the bid price (base price) per gallon, yielding the new monthly price. If contract award is made in a subsequent month after July 2023, then the posted price on the last business day in the preceding month will be used.

The aforementioned mechanism for monthly price revisions would then be applied to the Contract prices throughout the Contract period. Price revisions will be calculated by truncating all figures (priced in dollars per gallon) to four (4) decimal places. Applicable price changes will be effective on the first day of each month.

The Contract price and any adjustments will only be carried out to four (4) decimal places (priced in dollars per gallon).

Should the monthly price revision cycle not provide adequate price adjustments, because of rapid changes in worldwide liquefied petroleum gas (LPG) – propane prices, the State reserves the right to increase the frequency of the price revisions to a weekly basis. The weekly basis will utilize the Posted Price on the last business day of the week, to be effective the next business day.

Should postings differ from current description and/or format, a posting determined, by the Commissioner, in his or her sole discretion, to be most reflective of market conditions will be used. The same applies if OGS were to utilize a weekly pricing schedule. Corrections to prices previously posted in the OPIS Oil Price Daily will be considered only when caused by a typographical or clerical error on the part of said service provider.

NOTE: In the event the Propane Pipeline Selkirk price is not posted on a specified "Posting Day", the "Posting Day" will be the day previous to when a posted price is available in OPIS's publication. In the event the monthly "Posting Day" falls as a Holiday, the State will utilize the previous day's posting for the monthly period.

Price increases are limited to changes in pre-selected postings as noted above. Increases in contract costs or prices to compensate for other increases in the cost of doing business, regardless of the cause or nature of such costs of the contractor, will not be allowed during the contract period.

Price adjustments will continue using the same method if contract is extended.

6.6 Best Pricing Offer

During the Contract term, if the Commissioner becomes aware that the Contractor is selling substantially the same or a smaller quantity of a Product outside of this Contract upon the same or similar terms and conditions as that of this Contract at a lower price to a federal, state or local governmental entity, the price under this Contract, after consultation with the Contractor, may be reduced to a lower price on a

prospective basis at the discretion of the Commissioner. The Commissioner reserves the right to request information to verify pricing for the purposes of this clause.

6.7 Price Structure

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

Please refer to section 6.4 OPIS Posting for additional factors.

6.8 Prevailing Wage Rates – Public and Building Service Contracts

Work being bid is subject to the prevailing wage rate provisions of New York State Labor Law. See "Prevailing Wage Rates - Public Works and Building Services Contracts" in *Appendix B Section 7, General Specifications* and see "Wage and Hour Provisions" in Appendix A, clause 6. Any federal or State determination of a violation of any public works law or regulation, or labor law or regulation, or any OSHA violation deemed "serious or willful" may be grounds for a determination of vendor non-responsibility and rejection of bid.

The applicable Prevailing Wage Rate Schedule for this project is **PRC # 2022901219**

For access to the Department of Labor (DOL) Prevailing Wage Schedule, use the following link:
<https://applications.labor.ny.gov/wpp/showFindProject.do?method=showIt>

For Prevailing Wage Updates, use the following DOL link:
<https://applications.labor.ny.gov/wpp/publicViewPWChangesArt9.do?method=showIt>

Links to schedule updates appear in the table at the bottom of the web page.

IMPORTANT NOTE: The above PRC number MUST be noted on all purchase orders issued for purchases from this contract.

6.9 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).

6.10 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.

For all purchases executed using a New York State Procurement Card, Contractor shall provide an itemized receipt with each delivery.

6.11 Minimum Order

There is no minimum order for the Contract.

6.12 Invoicing and Payment

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

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

- Contractor Name
- Contractor Billing Address
- Contractor Federal ID Number
- NYS Vendor ID Number
- Account Number
- NYS Contract Number
- Name of Authorized User indicated on the Purchase Order
- NYS Agency Unit ID (if applicable)
- Customer Delivery Location ID Number as shown on Delivery Schedule (if applicable)
- Authorized User's Purchase Order Number
- Order Date
- Invoice Date
- Invoice Number
- Invoice Amount
- Product Descriptions
- Unit Price
- Quantity
- Unit of Measure
- Dates of Service/Delivery

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>.

6.13 Product Delivery

Delivery of all Contract Products shall be made in accordance with Appendix B, Product Delivery and Shipping/Receipt of Product. Delivery shall be made as specified and in accordance with instructions furnished with each order, unless otherwise directed in writing. Contractor must be prepared, at all times, to make prompt delivery, and the delivery time shall not exceed 48 hours from the time of order. Should there be a State declared emergency, an after-hours or weekend emergency, or should agency run out of propane at any time creating an emergency situation, the Contractor shall be required to provide product within four (4) hours of contact from the agency.

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

Failure to make prompt delivery may result in an Authorized User's submission of a Contract Performance Report to OGS. Per Appendix B, Section 48(a), (d), and (e), the Authorized User shall have the right to purchase sufficient liquefied petroleum gas - propane on the open market to fill such tank or tanks, and to charge any increase in price paid over the current contract price to the account of the Contractor.

Authorized Users shall be responsible for insuring that tanks are accessible to the Contractor. Authorized Users should also make certain that receiving personnel are available at time of delivery. Failure of the Authorized User to make appropriate delivery arrangements, which prevents the delivery of product upon Contractor's arrival at delivery site, may result in a charge to the Authorized User for the Contractor's transportation costs. The Contractor must notify the Authorized User of the attempted delivery prior to charging for any future delivery attempts for the same circumstance. The Contractor must state the amount that would be charged for the direct cost of this subsequent delivery attempt, and provide supporting documentation that substantiates the direct cost for the failed delivery at the fault of the Authorized User. The Authorized User must agree in writing to any such costs for subsequent delivery attempts, prior to the Contractor making the subsequent delivery. At no time should a charge be applied to an Authorized User for an attempted delivery that failed at no fault of their own.

NOTE: Contractor agrees to complete all installations for Authorized Users on the awarded Delivery Schedules no later than July 21, 2023, and within twenty-one (21) days, unless otherwise agreed between the Authorized User and Contractor, for new customers after receipt of a purchase order (or other ordering mechanism between Contractor and ordering entity), except in an emergency situation. Contractor must arrange service for set up with particular agency, and/or existing contractor as needed.

6.14 Automatic Replenishment

Requests for automatic replenishment are preferred in WRITING from an Authorized User, but may be required by the Contractor. A Contractor shall provide written notification back to any Authorized User's request for automatic replenishment on any tank. The Contractor shall maintain a record of the estimated consumption of liquefied petroleum gas - propane and shall replenish the Authorized User's tank or tanks without further notice from the Authorized User, whenever necessary to insure an adequate supply at all times.

If the Contractor, after having accepted the request from the Authorized User, permits the level of the fuel to fall below the percentages of the total capacity of the Authorized User's tank or tanks indicated in the following table, and does not meet the requirement to deliver on an emergency basis within four (4)

hours, the Authorized User shall have the right to purchase sufficient fuel on the open market from another vendor to fill such tank or tanks, and to charge any increase in price paid over the current contract price to the account of the Contractor. The Contractor shall permit the other vendor to supply liquefied petroleum gas - propane into Contractor-owned tank(s) and shall not hold the Authorized User or the other supplying source liable in any way for said delivery.

MINIMUM LEVEL	TOTAL - TANK CAPACITY/GALS
10%	Under 5500
15%	5,500 and over

6.15 Delivery Schedules

The delivery schedules, based on Authorized Users' requirements submitted to Procurement Services by Requirement Letter RL 219, are available as a guide to indicate proposed delivery points and estimated annual quantities. Bidders are advised that these delivery schedules may be revised up to the date of the bid opening to accommodate the addition of delivery points and quantities, and any changes will be posted to the OGS website under Bid Calendar and the Contract Reporter as a Bid Notification Update. Bidders should therefore make note of the revisions. This information is available to clarify delivery conditions, where possible. Any specific questions regarding the site conditions should be directed to the end-user via any communication available shown on the Delivery Schedule. The delivery schedules are attachments in this Solicitation, and any updates (if any) are available upon direct request to OGS Procurement Services via the e-mail listed under the designated contact on the front page of this Solicitation.

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

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

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

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

6.16 Product Return and Exchanges

In addition to the provisions of Appendix B, Title and Risk of Loss, Product Substitution, and Rejected Product, Products returned or exchanged due to quality problems, duplicated shipment, outdated Product, incorrect Product shipped, Contractor errors otherwise not specified, or Products returned or

exchanged due to Authorized User errors, shall be replaced with specified Products or the Authorized User shall be credited or refunded for the full purchase price.

Products shall be replaced within guaranteed delivery times (regular or emergency as applicable) of written notification to the Contractor of the Authorized User's intent to return or exchange the Product. Contractor can charge only a restocking fee for Product returned or exchanged due to Authorized User error that is determined not to be suitable for resale; the restocking fee cannot exceed the net price of the returned or exchanged Product.

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

6.17 Unanticipated Excessive Purchase

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

6.18 Contact 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 its 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.

6.19 NYS Financial System (SFS)

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

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/>.

6.20 Americans with Disabilities Act (ADA)

6.21 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-l, 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.

6.22 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*.

6.23 Report of Contract Usage

Contractor shall submit Attachment 8 – *Report of Contract Usage* including total sales to Authorized Users of this Contract by Contractor, and all authorized resellers, dealers and distributors, if any, semi-annually (twice per year – due January 15th for sales July 1st through December 31st and due July 15th for sales January 1st through June 30th). If the Contract period begins or ends in a fractional portion of a reporting period, only the actual Contract sales for this fractional period should be included in the *semi-annual* report.

Contractors shall specify if any authorized resellers, dealers or distributors are NYS Certified Minority- and/or Women-Owned Business Enterprises (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.

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

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

I. New York State Law

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”), the New York State Office of General Services (“OGS”) is required to promote opportunities for the maximum feasible participation of New York State-certified Minority- and Women-Owned Business Enterprises (“MWBEs”) and the employment of minority group members and women in the performance of OGS contracts.

II. General Provisions

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

III. Equal Employment Opportunity (EEO)

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000 for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to, the contracting State agency (the “Work”) except where the Work is for the beneficial use of the Contractor.
 - 1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate, or distinct from the Contract; or (ii) employment outside New York State.

2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor's equal employment opportunity policy. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.

B. Form EEO 100 – Staffing Plan

To ensure compliance with this section, the Contractor agrees to submit, or has submitted with the Bid, a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.

C. NYS Contract System Workforce Utilization Reporting Module (Commodities & 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/>. 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.

6.25 Participation Opportunities for New York State Certifies Service-Disables Veteran Owed 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/>

6.26 Use of Recycled or Remanufactured Materials

New York State supports and encourages Contractors to use recycled, remanufactured or recovered materials in the manufacture of Products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product or packaging unless such use is precluded due to health or safety requirements or Product specifications contained herein. Refurbished or remanufactured components or Products are required to be restored to original performance and regulatory standards and functions and are required to meet all other requirements of this Solicitation. Warranties on refurbished or remanufactured components or Products must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment. See Appendix B, *Remanufactured, Recycled, Recyclable or Recovered Materials*.

6.27 Surplus/Take-Back/Recycling

At the termination of the Contract, the Contractor is required to remove its own tank(s) within thirty (30) calendar days of the contract expiration date; unless the Contractor is either successful in obtaining a new contract award for that location, or arranges to exchange tanks with the new successful contractor

The purchasing agency shall be given a refund by the Contractor for any remaining liquefied petroleum gas left in the propane tank at the time it is removed when the contract expires. The refund will be based on the last contract price per gallon on the last day of the contract term, and would apply to all terminated contract locations, and the contract price per gallon at the time of vendor notification of account termination during the contract term.

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

A State Agency is reminded of its obligation to comply with the NY State Finance Law § 167, Transfer and Disposal of Personal Property, and § 168, The Management of Surplus Computer Equipment, regarding transfer and disposal of surplus personal property before utilizing take-back, recycling, or other options for disposition of equipment that is still in operable condition.

If Contractor offers a take-back/recycling program, then Contractor shall provide a record of disposition to each Authorized User who participates in the take-back/recycling program for units transferred for disposition. Contractor shall provide documentation that the units were disposed of in an environmentally sound manner in compliance with applicable local, state and federal laws.

6.28 Environmental Sustainability and NYS Executive Order 22

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. 22 (Leading By Example: Directing State Agencies to Adopt a Sustainability and Decarbonization Program), which imposes certain requirements on State Agencies, authorities, and public benefit corporations when procuring Products. More information on Executive Order No. 22, including specifications for offerings covered by this Contract, may be found at <https://ogs.ny.gov/greenny/>. State entities subject to Executive Order No. 22 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.

6.29 Consumer Products Containing Mercury

Contractor shall comply with the requirements of Title 21 of Article 27 of the NYS Environmental Conservation Law regarding restrictions on the sale, purchasing, labeling and management of any products containing elemental mercury under this Contract.

6.30 Diesel Emissions Reduction Act

Pursuant to N.Y. Environmental Conservation Law § 19-0323 (the "Law"), it is a requirement that heavy duty diesel vehicles in excess of 8,500 pounds use the best available retrofit technology ("BART") and ultra-low sulfur diesel fuel ("ULSD"). The requirement of the Law applies to all vehicles owned, operated by or on behalf of, or leased by State Agencies and State or regional public authorities. It also requires that such vehicles owned, operated by or on behalf of, or leased by State Agencies and State or regional public authorities with more than half of its governing body appointed by the Governor utilize BART.

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

6.31 Guarantee

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

This liability includes but is not limited to oil spills occurring during delivery. The Contractor shall provide constant surveillance during delivery by having a person in attendance at all times at the point of transfer. Oil spills of any size shall be immediately reported to the agency Business Office to effect contact with a representative of the Department of Environmental Conservation. More information can be viewed here:

<http://www.dec.ny.gov/chemical/8428.html>

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

6.32 Engineering Service

Contractor must be prepared at all times to furnish engineering service when so requested and/or to investigate a complaint and report to the Authorized User and OGS on any complaint that might arise in

connection with the use of Contractor's fuel in State equipment. This engineering service will include but not be limited to the diagnosis of fuel related engine problems in the Authorized User's equipment utilizing the Contractor's fuel.

6.33 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.

6.34 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.

6.35 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.

6.36 Extensions 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.

6.37 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.

6.38 Drug 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.

6.39 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.

6.40 Contract Documents; Electronic Format

OGS encourages Contractor to submit all documents to OGS in an electronic format, including electronic copies of documents with original signatures. Documents requested by OGS should be submitted in the format specified by OGS. Contractor is responsible for retaining the original documents with original signatures that have been scanned and submitted electronically for the term of the contract and any extensions thereof, and for a period of six (6) years after the term of the contract has ended. Contractor shall submit such documents with original signatures to OGS upon request. If Contractor seeks to assign the contract during the term, Contractor shall provide all documents relating to the bid and contract that it has retained to the successor Contractor (assignee) upon OGS consent to the assignment.