



Office of General Services Procurement Services

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

Invitation for Bids

Redline; For Information Only; Do not submit with Bid

BID OPENING DATE: May 17 ²⁴ , 2023 TIME: 1:00 P.M. EST INVITATION FOR BIDS NUMBER: 23287		TITLE: Group 05500 Fuel Oil, Heating (Grades #2, #6, Kerosene and Bioheating Fuel) (Statewide) Classification Codes: 15 Fuels & Lubricants	
CONTRACT PERIOD: September 2, 2023 – August 31, 2025 with renewal options			
DESIGNATED CONTACTS: In accordance with the Procurement Lobbying Law [State Finance Law § 139-j(2)(a)], the following individuals are the Designated Contacts for this Solicitation. All questions relating to this Solicitation must be addressed to the Designated Contacts.			
Email Address: OGS.sm.PS_CM_FleetFuelRoads@ogs.ny.gov			
Bryant Kirk Contract Management Specialist 2 Telephone No. (518) 402-3021		Ruth K. Quezada Team Leader Telephone No. (518) 473-2801	

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

If applicable, place an "x" in the appropriate box(es) <i>(check all that apply)</i>			
<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

If you are not bidding, place an "x" in the box and return this page only.
<input type="checkbox"/> 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 A – *Standard Clauses for NYS Contracts* (October 2019)
- Appendix B – *General Specifications* (April 2016)
- Appendix C – *Federal Funding Agency Mandatory Terms and Conditions*

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- 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 – Non-State Agencies
- Attachment 12 – Intent to Bid
- Attachment 13 – Fuel Supplier Certificate

1 INTRODUCTION

1.1 Overview

This Solicitation is issued by the New York State (“NYS”) Office of General Services (“OGS”), Procurement Services for various types of Fuel Oil, e.g., Heating (Grades #2, #6, Kerosene, and biodiesel) 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 Intent to Bid and 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 contracts under this Award will be centralized contracts based on filed requirements. This is a statewide Solicitation. It is the State’s intent to award contracts by item within a County on the basis of lowest price to responsive and responsible Bidders, who are able to meet the terms and conditions of this Solicitation, and who offer the best overall pricing in accordance with the “Method of Award” clause described herein. The awarded Bidders will be granted a contract for approximately 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 MWBE Goals but there aren’t any SDVOB goals.

1.2 Scope

The purpose of this Solicitation and the resultant Contracts is to provide Authorized Users with a means of acquiring various grades of Fuel Oil, e.g., Heating (Grades #2, #6, Kerosene, and biodiesel) by bulk delivery to Authorized Users’ storage facility for use by Authorized Users. The product shall be Contractor furnished, delivered and unloaded as specified herein.

This Solicitation consists of different fuel oil types (e.g., Grades #2, #6, Kerosene, and biodiesel). All products provided shall be homogenous fuel oil, kerosene, or biodiesel blends suitable for burner appliances, and they shall conform to the requirements of ASTM D396 (Fuel Oil), ASTM D3699 (Kerosene), ASTM D6751, biodiesel or latest revision(s) thereof, or approved equivalent method, except as listed differently elsewhere herein.

This Solicitation is based on the fuel oil (heating) requirements submitted to OGS by Authorized Users in various counties. The specific users, counties and tanks are listed in the Delivery Schedules. See Attachments 10 and 11.

There shall be no blending of other than pure distillates or unused residual fuel oils for product provided via this contract.

It is the intent of this Solicitation to make one (1) award each in the following fuel types for the following Counties:

Item Number	County	Fuel Type	OPIS Posting Location
1	Albany	2-TW B5	Albany
2	Albany	2-TW B20	Albany
3	Albany	2-MT B5	Albany
4	Albany	2-MT B10	Albany
5	Albany	6-MT (0.5%) B5	Boston 0.5%

6	Albany	KERO (Heating)	Albany
7	Bronx	2-TW B5	Long Island
8	Bronx	2-MT B5	Long Island
9	Broome	2-TW B5	Syracuse
10	Broome	2-TW B10	Syracuse
11	Broome	2-MT B5	Syracuse
12	Broome	KERO (Heating)	Syracuse
13	Cayuga	KERO (Heating)	Syracuse
14	Chemung	2-TW B5	Syracuse
15	Chemung	2-MT B5	Syracuse
16	Chemung	KERO (Heating)	Syracuse
17	Chenango	2-TW B5	Utica
18	Clinton	2-TW B5	Albany
19	Clinton	2-TW B10	Albany
20	Clinton	2-TW B20	Albany
21	Clinton	2-MT B5	Albany
22	Clinton	2-MT B10	Albany
23	Clinton	KERO (Heating)	Albany
24	Columbia	2-TW B5	Newburgh
25	Columbia	2-MT B5	Newburgh
26	Columbia	2-MT B10	Newburgh
27	Columbia	KERO (Heating)	Newburgh
28	Cortland	2-TW B5	Syracuse
29	Delaware	2-TW B5	Albany
30	Delaware	2-TW B20	Albany
31	Delaware	2-MT B5	Albany
32	Delaware	2-MT B20	Albany
33	Delaware	KERO (Heating)	Albany
34	Dutchess	2-TW B5	Newburgh
35	Dutchess	2-MT B5	Newburgh
36	Dutchess	KERO (Heating)	Newburgh
37	Erie	2-TW B5	Buffalo
38	Erie	2-MT B5	Buffalo
39	Erie	KERO (Heating)	Buffalo
40	Essex	2-TW B5	Albany
41	Essex	2-TW B10	Albany
42	Essex	2-MT B5	Albany
43	Essex	KERO (Heating)	Albany
44	Franklin	2-TW B5	Albany
45	Franklin	2-MT B5	Albany
46	Franklin	2-MT B10	Albany

47	Franklin	2-MT B20	Albany
48	Franklin	KERO (Heating)	Albany
49	Greene	2-TW B5	Newburgh
50	Greene	2-MT B5	Newburgh
51	Hamilton	2-TW B5	Utica
52	Hamilton	2-MT B5	Utica
53	Hamilton	KERO (Heating)	Utica
54	Herkimer	2-MT B5	Utica
55	Jefferson	2-TW B5	Utica
56	Jefferson	2-TW B10	Utica
57	Jefferson	2-MT B5	Utica
58	Jefferson	KERO (Heating)	Utica
59	Kings	2-TW B5	Long Island
60	Kings	2-TW B20	Long Island
61	Kings	2-MT B5	Long Island
62	Lewis	2-TW B5	Utica
63	Livingston	2-TW B5	Buffalo
64	Madison	2-TW B5	Utica
65	Madison	KERO (Heating)	Utica
66	Monroe	2-TW B10	Buffalo
67	Monroe	2-MT B5	Buffalo
68	Montgomery	2-TW B5	Utica
69	Nassau	2-TW B5	Long Island
70	Nassau	2-TW B10	Long Island
71	Nassau	2-TW B20	Long Island
72	Nassau	2-MT B5	Long Island
73	New York	2-TW B5	Long Island
74	New York	2-MT B5	Long Island
75	Oneida	2-TW B5	Utica
76	Oneida	2-TW B10	Utica
77	Oneida	2-TW B20	Utica
78	Oneida	2-MT B5	Utica
79	Oneida	KERO (Heating)	Utica
80	Onondaga	2-TW B5	Utica
81	Onondaga	KERO (Heating)	Utica
82	Orange	2-TW B5	Newburgh
83	Orange	2-TW B20	Newburgh
84	Orange	2-MT B5	Newburgh
85	Orange	KERO (Heating)	Newburgh
86	Orleans	2-TW B5	Buffalo
87	Orleans	2-TW B10	Buffalo

88	Orleans	KERO (Heating)	Buffalo
89	Otsego	2-TW B5	Albany
90	Otsego	2-MT B5	Albany
91	Otsego	KERO (Heating)	Albany
92	Putnam	2-TW B5	Newburgh
93	Putnam	2-MT B5	Newburgh
94	Queens	2-MT B5	Long Island
95	Rensselaer	2-TW B5	Albany
96	Rensselaer	2-TW B10	Albany
97	Rensselaer	KERO (Heating)	Albany
98	Richmond	2-TW B5	Long Island
99	Richmond	2-MT B5	Long Island
100	Rockland	2-TW B5	Newburgh
101	Rockland	2-TW B10	Newburgh
102	Rockland	2-MT B5	Newburgh
103	Rockland	KERO (Heating)	Newburgh
104	Saratoga	2-TW B5	Albany
105	Saratoga	2-MT B5	Albany
106	Saratoga	KERO (Heating)	Albany
107	Schenectady	2-TW B5	Albany
108	Schenectady	2-TW B10	Albany
109	Schoharie	2-TW B5	Albany
110	Schoharie	2-TW B10	Albany
111	Schoharie	2-TW B20	Albany
112	Schoharie	2-MT B5	Albany
113	Schoharie	2-MT B10	Albany
114	Schoharie	KERO (Heating)	Albany
115	Seneca	2-TW B5	Syracuse
116	Seneca	KERO (Heating)	Syracuse
117	St Lawrence	2-TW B5	Albany
118	St Lawrence	2-TW B10	Albany
119	St Lawrence	2-MT B5	Albany
120	St Lawrence	2-MT B10	Albany
121	St Lawrence	KERO (Heating)	Albany
122	Suffolk	2-TW B5	Long Island
123	Suffolk	2-MT B5	Long Island
124	Sullivan	2-TW B5	Newburgh
125	Sullivan	2-MT B5	Newburgh
126	Sullivan	KERO (Heating)	Newburgh
127	Tioga	2-MT B5	Syracuse
128	Tompkins	2-TW B5	Syracuse

129	Ulster	2-TW B5	Newburgh
130	Ulster	2-MT B5	Newburgh
131	Ulster	KERO (Heating)	Newburgh
132	Warren	2-TW B5	Albany
133	Warren	2-TW B10	Albany
134	Warren	2-MT B10	Albany
135	Warren	KERO (Heating)	Albany
136	Washington	2-TW B5	Albany
137	Washington	2-MT B5	Albany
138	Washington	KERO (Heating)	Albany
139	Westchester	2-TW B5	Long Island
140	Westchester	2-TW B20	Long Island
141	Westchester	2-MT B5	Long Island
142	Westchester	2-MT B20	Long Island

1.3 Estimated Quantities

A Contract resulting from this Solicitation shall be an estimated quantity Contract. No specific quantities are represented or guaranteed, and the State provides no guarantee of individual Authorized User participation. The estimated quantities are based on requirements submitted to OGS by Authorized Users to purchase from the resulting Contract. These Authorized Users have agreed not to enter into any other contracts for Fuel Oil (Heating) they filed for during the resulting contract period and will purchase all their Fuel Oil (Heating) requirement needs from awarded contracts. See clauses 6.12 - 6.15 Delivery Clauses, of this Solicitation. The Contractor must furnish all quantities actually ordered at or below the Contract prices. The anticipated quantity of the award for this Solicitation, based on filed requirements from Authorized Users, is approximately 29,029,414 gallons annually for all items combined. The individual value of each resultant Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered, see clauses 6.12 - 6.15 Delivery Clauses.

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 prior to the end of the term pursuant to the terms and conditions of the Contract. Appendix B, Section 43 (Termination) subparagraph (b) (For Convenience) is hereby deleted for purposes of this Solicitation.
- Contract pricing that is lower than anticipated could result in a higher quantity of purchases by Authorized Users than anticipated.
- In accordance with the *Delivery 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 may accept orders for any non-State Agency or Political Subdivision not appearing on the Delivery Schedule at the time of the bid opening.
- Contract pricing that is higher than anticipated could result in a lower quantity of purchases by Authorized Users than anticipated.

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

1.4 Key Events/Dates

EVENT	DATE	TIME
IFB Release	4/7/2023	N/A
Intent to Bid Due Date	4/28/2023	5:00 PM EST
Closing Date for Bidder Questions	4/21/2023	5:00 PM EST
OGS Procurement Services' Responses to Bidder Questions	5/5/2023 (tentative)	N/A
Bid Opening / Due date for Bids	5/17/2023 5/24/2023	1:00 PM EST
Notice of Tentative Award:	6/8/2023 (tentative)	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 – 23287 – [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 23287 MWBE or SDVOB INTEREST_COMPANY NAME*” to OGS.sm.PS_CM_FleetFuelRoads@ogs.ny.gov on or before the date and time indicated in Key Events/Dates of Closing Date for Bidder Questions.

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 designation for the American Society for Testing and Materials. All ASTM references in the specification are understood to refer to the most recent edition of that specification/standard.

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

“Bioblend” is a mixture of biodiesel with either #2 fuel oil or #6 fuel oil.

“Biodiesel (B100)” a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100 or 100% biodiesel fuel, as defined in ASTM D6751 or latest revision thereof. ASTM D6751 covers low sulfur biodiesel (B100) for use as a blend component with diesel or other fuel oils.

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

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

“Human Needs Customer” High priority customer such as residences hospitals and nursing homes for which failure to get heating oil could be life threatening.

“IP” shall be used as a designation for the Institute of Petroleum.

“Item” shall mean a specific fuel type (column C of Attachment 1) in a specific county (column B of Attachment 1) with its own unique number assigned to it as listed in column A of Attachment 1.

“Kerosene” a thin oil distilled from petroleum or shale oil, used as a fuel for heating and cooking.

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

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

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

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

“No. 2 (#2)” The symbol No. 2 and/or #2 shall be used as a grade designation for distillate fuel oil meeting the requirements of ASTM D396.

“No. 6 (#6)” The symbol No. 6 and/or #6 shall be used as a grade designation for heavy residual fuels meeting the requirements of ASTM D396 used in industrial burners equipped for this viscosity range. Preheating is usually required for handling and proper atomization of this product.

“No. 2B5 (#2 B5)” The symbol No. 2B5 or #2 B5 shall be used as a grade designation for distillate fuel oil that is a mix of 95% petroleum and 5% soy-based product meeting the requirements of ASTM D396 or latest revision thereof (Fuel Oil).

“No. 2B10 (#2 B10)” The symbol No. 2B10 or #2 B10 shall be used as a grade designation for distillate fuel oil that is a mix of 90% #2 fuel and 10% B100 with the blended product meeting the requirements of ASTM D7467.

“No. 2B20 (#2 B20)” The symbol No. 2B20 or #2 B20 shall be used as a grade designation for distillate fuel oil that is a mix of 80% #2 fuel and 20% B100 with the blended product meeting the requirements of ASTM D7467.

“No. 6 B5 (#6 B5)” The symbol No. 6B5 or #6 B5 shall be used as a grade designation for heavy residual fuels that is a mix of 95% #6 fuel and 5% B100 meeting ASTM D396.

“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.

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

“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 (“NYSPPro”) 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”.

“TW” shall refer to delivery by Tank Wagon of less than 5,500 gallons.

1.13 Appendices and Attachments

APPENDICES

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

Appendix B – *General Specifications* (April 2016)

Appendix C – *Federal Funding Agency Mandatory Terms and Conditions*

ATTACHMENTS

Attachment 1 – Pricing
 Attachment 2 – NYS Required Certifications
 Attachment 3 – Encouraging Use of NYS Businesses
 Attachment 4 – Insurance Requirements
 Attachment 5 – Bidder Information Questionnaire
 Attachment 6 – Bidder Submission Checklist
 Attachment 7 – Bidder Questions Form
 Attachment 8 – Report of Contract Usage
 Attachment 9 – Certification Under Executive Order No. 16
 Attachment 10 – Delivery Schedule – State Agencies
 Attachment 11 – Delivery Schedule – Non-State Agencies
 Attachment 12 – Intent to Bid
 Attachment 13 – Fuel Supplier Certificate

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 Oder 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;
17. Attachment 13 – Fuel Supplier Certificate

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 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 should include a certificate executed by the distributor (referred to as ~~Fuel~~-Supplier Certificate

~~Attachment 13~~), stating that the Bidder is an authorized dealer of the distributor and that all qualifications, requirements and specifications of this Solicitation will be met (as indicated in Section 4.10 ~~and Attachment 13~~). 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.
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.
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 certificate from the refiner or distributor (referred to as ~~Fuel~~ Supplier Certificate ~~Attachment 13~~), as applicable, that guarantees the refiner or distributor will furnish the Bidder/Contractor with fuel oil (heating) for the life of the Contract. 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 oil (heating), except motor transports, are equipped with meters to accurately measure the quantity of fuel. Tank Wagons used for the delivery of fuel oil (heating) 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 oil (heating) to New York State must be registered in accordance with applicable provisions of the New York State Tax Law amendments effective September 1, 1998, or as may be amended. Also, if vendors intend to supply clear fuel, they must possess a valid IRS Form 637UV.
7. Bidder must maintain service facilities and have trained personnel qualified to service the product furnished at the using agency 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 county(ies). 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 6.15, Delivery Schedules.

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 a rejection of that Bidder's bid.

3 SPECIFICATIONS

3.1 Product Requirements

The Bidder guarantees that the product supplied will meet or exceed the minimum specifications listed in this Section.

SUMMARY OF EPA SULFUR CONTENT (REQUIREMENTS)

Sulfur in Fuel Limitation

Geographical Area of the State	Residual #6 and biodiesel	Distillate #1 & #2 and biodiesel Blends B5,B10, &B20
New York City	0.30	0.0015
Nassau, Rockland, and Westchester Co.	0.37	0.0015
Suffolk County: Towns of Babylon, Brookhaven, Huntington, Islip and Smith Town	.50	0.0015
Erie and Niagara Counties	.50	0.0015
Remainder of State	.50	0.0015

Owners and/or operators of commercial, industrial, or residential emission sources that fire number two heating oil on or after July 1, 2012 are limited to the purchase of number two heating oil with 0.0015 percent sulfur by weight or less.

Owners and/or operators of a stationary combustion installation that fires distillate oil other than number two heating oil are limited to the purchase of distillate oil with 0.0015 percent sulfur by weight or less on or after July 1, 2014.

Owners and/or operators of any stationary combustion installation that fires distillate oil including number two heating oil are limited to the firing of distillate oil with 0.0015 percent sulfur by weight or less on or after July 1, 2016.

TABLE I

REQUIREMENT	A.S.T.M. TEST NO.		Kerosene (see Note)	No.1	No. 2
Gravity, °API Minimum:	D1298		36	35	30
Maximum:	D287 D4052	52		46 38	
Flash Point; °F Minimum:			100	100	----
Minimum:	D93	----		---- 120	
Freeze Point, °F Maximum:	D2386		-22°F	----	----

Pour Point, °F Maximum :	D97	----	-9	21
Water & Sediment, %Volume, D1796 Maximum:	D473	None	Trace	Trace
Viscosity, SUS/100°F Maximum:	D2161 D445 (IP #71-84)	----		33
Minimum:		----		33
Viscosity, Kinematic, Maximum: (Centistokes @104°F)\	D445	1.9	2.2	3.6
Minimum:		1.0	1.4	1.8
Carbon Residue, %Maximum by Weight based on 10% distillate residue: based on Total residue:	D189	----	0.10	0.35
		----	----	----
Ash, % maximum by weight:	D482	----	0.05	0.05
Corrosion, Maximum 3 hours @122°F	D130	Strip #3	Strip #3	Strip #3
Sulfur, wt. % Maximum Or Legal Local Limit Per EPA requirements when stricter	D129	0.0015	0.0015	0.0015
BTU Per Gallon, Minimum (Bomb Calorimeter)	D240	131,000	136,000	139,000
Cloud Point, °F Nominal	D5772	-35	-35	40

NOTES ON CLOUD POINT REQUIREMENTS:

This note is intended to provide information and guidance to end users of the fuels described in the Table I with respect to cloud point requirements and to low temperature performance of these fuels in general. Cloud point of fuel is the temperature at which wax crystals begin to form in the fuel and, as such, can be an indicator of the temperature at which users may begin to experience operational problems relating to filter clogging, etc. However, numerous factors can contribute to operational problems relating to fuel temperature including filter type, condition, fuel feed rate, fuel viscosity, equipment condition and numerous other factors. For these reasons, cloud point may not necessarily well correlate with such problems but may be used as an indicator of temperatures where users may begin to experience operational difficulties. It should be noted that the No. 2 fuel oil specification (ASTM D396 or latest revision thereof) does not contain requirements for cloud point. It is important for end users to realize that the cloud point requirements listed need to be viewed as guidance regarding fuel considerations in low temperature conditions. Users having fuel storage locations that are known to experience temperatures as low or lower than the cloud points listed should consult with the fuel vendor to assure that fuel delivered to such locations will be appropriate for low temperature storage and use. Some measures to consider in consultation with fuel vendors may be the use of fuel additives or the further blending of fuel with very low pour point/cloud point fuels such as kerosene. Such measures are the sole responsibility of the end users and should be discussed and arranged with fuel vendors in advance of any delivery. Please see the section WINTER BLEND REQUIREMENTS earlier in this document for further guidance.

NOTE:

In addition to the other requirements of this specification, Kerosene shall pass a sixteen (16) hour burning test, after first weighing, using ASTM test method D187 or latest revision thereof, or approved equivalent method with the following minimum results at the end of the required burn period:

- a. Maximum flame drop: 5mm (0.197”);

- b. Maximum change - flame width: 6mm (0.236”);
- c. No mushroom development;
- d. Only slight white deposit permissible on globes;
- e. Tensile strength of wick fibre shall be uninjured;
- f. Maximum char: 1/4”;
- g. Steady, free-burning without undue sensitivity to drafts;
- h. Flame shall hold its shape for duration of test; and
- i. Rate of Burning, after 1st weighing, shall be 18 thru 26 grams per hour.

TABLE II

Heavy residual fuel oil (#6) shall conform to the following requirements:

1 A.S.T.M. Test No.	.50% Max. Sulfur D129 or D4294	1.00% Max. Sulfur D129 or D4294	0.50% Max. Sulfur D129 or D4294	0.30% Max. Sulfur D129
Gravity (60°F) D287	Min. 6.0 Max. 18.0	Min. 10.0 Max. 20.0	Min. 10.0 Max. 23.0	Min. 10.0 Max. 25.0
Flash Point F° D93	Min. 140	Min. 140	Min. 140	Min. 140
Viscosity at 122°F D2161	Min. 140 Max. 300	Min. 100 Max. 300	Min. 50 Max. 300	Min. 30 Max. 300
NOTE: Viscosity Std. per ASTM #D396, Table #2, Saybolt Furol Seconds [DO NOT REVISE].				
All #6 fuel oil regardless of sulfur content: Water by Distillation (D95): Water Content shall not exceed 1.0%; Sediment by Extraction (D473): Sediment content shall not exceed 0.5%; Total Water & Sediment: W & S combined content shall not exceed 1.5%. (D95() + (D473 or D1796)				
Ash (% by weight) D482	Max. 0.100	Max. 0.100	Max. 0.100	Max. 0.100
Carbon Residue, % Weight based on Total residue: D189 regardless of sulfur content	17% max.			
BTU per gallon D240	Min. 149,000	Min. 147,000	Min. 144,000	Min. 143,000

3.2 Local Laws and/or Mandates

The State makes no guarantee that the filed requirements submitted by Authorized Users are in compliance with any applicable local laws or mandates regarding fuel types, such as the New York City Biodiesel Mandate. Bidders are advised to review filed requirements prior to bidding and confirm with Authorized Users, as necessary, that filed requirements are in compliance with any applicable local laws or mandates.

Any questions, errors or requests for clarification regarding filed requirements should be submitted during the Bidder Questions period for this Solicitation, so that they may be resolved or corrected prior to bid submission.

During the term of any contract resulting from this Solicitation, Authorized Users and Contractors will share responsibility for ensuring and maintaining compliance with any applicable local laws or mandates regarding fuel types.

3.3 Fill and Vent Requirements

Agencies must ensure that fill and vent equipment adequately meet NYS Standards. Contractors have the responsibility of reporting faulty equipment to the end users and the appropriate NYS regulatory agencies.

NOTE: Bidder's delivery trucks WILL BE EQUIPPED WITH METERS, with the exception of motor transports, to accurately measure quantities delivered. Metered deliveries must be accompanied by a delivery ticket showing brand or grade and number of gallons delivered.

Supplementing Clauses 31 and 32 of Appendix B, General Specifications for Procurement Contracts, orders will call for delivery within a specified number of hours after date of order. As much time as possible will be allowed the Contractor for making deliveries; however, the Contractor shall be in a position to make bulk deliveries within forty-eight (48) hours after receipt of order.

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

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 are responsible for making certain that the delivery site is made ready for proper delivery by the Contractor. Failure of the agency to make appropriate arrangements preventing delivery of product upon Contractor's arrival at delivery site may result in a charge to the agency for the Contractor's transportation costs for that particular trip. Agencies should also make certain that receiving personnel are available at time of delivery.

Agencies should also refer to CL-804 dated July 7, 2014 as they are responsible for the implementation of monitoring programs to ensure compliance by supplier with these specification requirements. Circular Letters (CL) are found on the OGS website under Announcements.

3.4 Topping Off Tanks

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

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

3.5 Non-Complying Product – Delivery

Deliveries of fuel oil may be sampled at the Contractor's loading point or at the point of delivery by a representative of the purchasing Agency's personnel. The methods of sampling and testing will be as listed elsewhere herein.

When it is found that fuel oil delivered does not comply with the specification requirements, the Contractor, at its own cost and expense, may be required to remove all such sub-standard fuel oil from the purchaser's tank(s) and replace it with fuel oil meeting the specifications, if such removal is so instructed by the purchasing agency within a maximum time period of twenty-four (24 hrs.) hours.

When an inspection of the tank(s) after the removal of the sub-standard product indicates that the delivered product has rendered the tank(s) unsuitable for use, then the Contractor may be responsible for cleaning of the tank(s) so affected.

3.6 Non-Complying Product Delivery Deduction

Deductions shown hereafter will be made from the invoice price, or subsequent agency invoices, for delivering fuel oil that does not comply with the detailed specifications, whether or not the fuel oil in question has been consumed by the purchasing Agency. The maximum of all combined deductions shall not exceed ten (10%) percent for an individual delivery, excluding gallon adjustments for temperature and/or water & sediment in excess of one percent.

3.7 Non-Complying Product – Flash Point – Price Deduction

When the delivered fuel oil's flash point is found to be lower than the minimum requirement, but not greater than six (6) degrees Fahrenheit lower than that minimum; a deduction from the contracted price shall be taken at the rate of one-half (0.5%) percent for every two (2) degrees Fahrenheit below the specified limit.

Additionally, when the delivered fuel oil's flash point is found to be lower than the minimum requirement by greater than six (6) degrees Fahrenheit; a deduction from the contracted price shall be taken at the rate of one (1.0%) percent for every two (2) degrees Fahrenheit below the specified limit which is greater than 6 degrees Fahrenheit lower. (i.e., 10 degrees below specification limit: the deduction for the 1st 6 degrees Fahrenheit is 1.5%; the deduction for the next 4 degrees Fahrenheit is 2%; and the total deduction is 3.5% for being ten degrees Fahrenheit below the limit).

3.8 Non-Complying Product – Water & Sediment Content – Price Deduction

When the delivered fuel oil's water and sediment content is found to be greater than three hundredths (0.03%) of a percent for Kerosene, No. 1 and No. 2, a deduction from the contracted price shall be taken at the rate of one (1%) percent for every two hundredths (0.02%) of a percent above the specified limit (i.e., 0.02% above limit equals a 1% deduction, 0.04% above limit equals a 2% deduction, and 0.06% above equals a 3% deduction).

No. 4 fuel oil shall have an excess water and sediment content adjustment at the rate of one-tenth percent (0.1%) of invoice for every one-tenth (0.1%) in excess of five-tenths (0.5%) up to and including one percent (1.0%) and at the rate of two-tenths percent (0.2%) of invoice for every one-tenth percent (0.1%) in excess of one percent (1.0%).

No. 6 fuel oil shall have an adjustment in quantity in lieu of the aforementioned price percentage adjustment. The No. 6 fuel oil deduction in quantity shall be made for all water and sediment in excess of one (1.0%) per cent volume, i.e., 30000 gallons delivered with two (2% or 0.02) percent combined water & sediment by volume: $30,000 \times (0.02 - 0.01)$ equals a three hundred (300) gallon deduction. Payment should be adjusted for a 29,700-gallon delivery.

3.9 Non-Complying Product – Viscosity – Price Deduction

When the delivered fuel oil's viscosity is found to be greater than two (2) seconds above the specified maximum requirements, a deduction from the contracted price shall be taken at the rate of one tenth (.1%) percent for every two seconds above the specified limit. (i.e., 2 seconds above limit equals a .1% deduction, 4 seconds above limit equals a .2% deduction, 6 seconds above equals a .3% deduction).

3.10 Non-Complying Product – Sulfur Content – Price Deduction

When the delivered fuel oil's sulfur content is found to be greater than one tenth (0.10%) of a percent above the specified maximum requirements for the respective delivery area a deduction from the contracted price shall be taken at the rate of one (1%) percent for every one tenth (0.10%) of a percent above the specified limit. (i.e., 0.10% above limit equals a 1% deduction, 0.20% above limit equals a 2% deduction, and 0.30% above equals a 3% deduction).

3.11 Non-Complying Product – Ash Content – Price Deduction

When the delivered fuel oil's ash content is found to be greater than two thousandths (0.002%) of a percent above the maximum but less than two hundredths (0.02%) of a percent above the specified maximum ash requirement, a deduction from the contracted price shall be taken at the rate of one (1.0%) percent of the total price.

When the delivered fuel oil's ash content is found to be two hundredths (0.02%) of a percent, or more, above the maximum but less than four hundredths (0.04%) of a percent above the specified maximum ash requirement, a deduction from the contracted price shall be taken at the rate of two (2.0%) percent of the total price.

When the delivered fuel oil's ash content is found to be four hundredths (0.04%) of a percent, or more, above the maximum but less than six hundredths (0.06%) of a percent above the specified maximum ash requirement, a deduction from the contracted price shall be taken at the rate of four (4.0%) percent of the total price.

When the delivered fuel oil's ash content is found to be six hundredths (0.06%) of a percent, or more, above the specified maximum, but less than eight hundredths (0.08%) of a percent above the specified maximum ash requirement, a deduction from the contracted price shall be taken at the rate of six (6.0%) percent of the total price.

When the delivered fuel oil's ash content is found to be eight hundredths (0.08%) of a percent, or greater, above the specified maximum requirements for the ash content, a deduction based on the contracted price shall be assessed at the rate of ten (10%) percent of the total price of the product regardless of whether the fuel oil delivery is removed or not removed.

When the delivered fuel oil's ash content is found to be greater than the maximum allowed in Table I or Table II (as appropriate for the fuel grade) a deduction from the total price shall be taken as described in the following summary table.

Ash content (%) greater than	Ash content (%) less than	Deduction taken on Total Price
Spec Req. +0.002%	Spec Req. +0.02%	1.0%
Spec Req. +0.02%	Spec Req. +0.04%	2.0%
Spec Req. +0.04%	Spec Req. +0.06%	4.0%
Spec Req. +0.06%	Spec Req. +0.08%	6.0%
Spec Req. +0.08%		10.0% regardless if fuel removed or not

3.12 Non-Complying Product – Btu Per Gallon Content – Price Deduction

The respective grade of fuel oil provided under State contract must meet the minimum BTU per gallon requirements for each sulfur level as described herein. If the fuel oil, which is subject to independent testing laboratory analysis is found to be non-conforming with these specifications pertaining to BTU per gallon levels, a deduction will be assessed against the contractor by adjusting the invoice as follows:

When the product delivered contains less than the permitted minimum BTU per gallon level, the invoice will be adjusted by dividing the actual BTU/gallon level delivered by the minimum BTU/gallon requirement for the type of fuel oil purchased, multiplying the quotient by the contract adjusted per gallon price at the time of delivery, and then multiplying that figure by total gallons delivered.

EXAMPLE

For delivery of 1.0% maximum sulfur No. 6:

Gallons delivered - 4000

BTU/gallon per analysis - 145,000

BTU/gallon per specification - 147,000

145,000 X price/gallon X 4,000 = adjusted total product

147,000 cost on invoice

NOTE: When more than the minimum BTU/gallon levels are delivered, there will be no adjustment of price, and delivery will be considered in conformance with this provision of the specifications relative to its BTU content.

Address inquiries relative to these Specifications to OGS.sm.PS_CM_FleetFuelRoads@ogs.ny.gov

3.13 Winter Blend Requirements

Contractors of bioblends, at their option, may provide a winter blend upon agency request. Invoice for winter blend will show separate pricing for bio-blends and kerosene as necessary. The price for bioblends, shall be the contract price and the price for kerosene but the kerosene shall be no greater than the contractor's prevailing price for kerosene (or, if applicable, contractor's awarded price for kerosene). Agencies shall obtain price quote for kerosene prior to ordering and the State reserves the right to determine if price is reasonable. If agreement on price cannot be obtained, agencies shall follow purchasing guidelines to purchase winter blend in the open market. If additives rather than kerosene are used to provide winter protection, the contractor is allowed to charge market price for additives, and as with kerosene, list price as a separate line item on invoice.

3.14 Environment Reporting Requirements

Certain customers using the State fuel oil contract must provide reports regarding the emissions from their fuel oil heating plants. At the customers' request, the contractor will be required to provide written documentation for each delivery to prove that the fuel delivered is in compliance with EPA standards in effect for the type of fuel delivered to the customer under the State fuel oil contract. OGS Procurement Services has provided a fuel supplier certificate (see Attachment 13), which can be used for this purpose. Contractors can use another form of reporting (such as Bill of Lading/Delivery Ticket) providing the following information is included:

FOR DISTILLATE OIL:

- 1) Supplier's name and address
- 2) The date/deliveries covered by the certificate
- 3) The type of fuel delivered
- 4) Sulfur content of the fuel
- 5) Heating value (BTU)
- 6) A signed statement that the fuel complies with ASTM D396-Standard Specifications for fuel oil or latest revision thereof
- 7) Location of the oil when tested
- 8) Test method used to determine the sulfur content of the oil

3.15 Flash Point

The specified minimum Flash Point for Fuel Oils provided under this contract shall be as specified in Table I and Table II, elsewhere herein, for the respective fuel oil being provided. Delivered product having a flash point below that specified in Table I or Table II, but not greater than twenty (20) degrees Fahrenheit less shall be adjusted in price as specified elsewhere herein for NON-COMPLYING PRODUCT. Delivered product having a flash point greater than twenty (20) degrees Fahrenheit below that specified shall be removed from the

purchasing agency's tank and replaced with product conforming to specifications. The Flash Point shall be determined using ASTM Test Method D93 (IP #34/85) or latest revision thereof.

3.16 Water and Sediment

The specified maximum Water & Sediment content for Fuel Oils provided under this contract shall be as specified in Table I and Table II, elsewhere herein. Delivered product having a water & sediment content greater than the specified percent shall be adjusted in price as specified elsewhere herein for NON-COMPLYING PRODUCT. Delivered product having a water & sediment greater than the specified percent shall be removed from the purchasing agency's tank and replaced with product conforming to specifications, at purchasing agency's discretion based on excessive filter maintenance and/or poor burner performance. The Water & Sediment content shall be determined using - ASTM Test Method D1796 (IP #75/82) or latest revision thereof, or approved equivalent method; or the sum of the results of ASTM D95 (IP #74/84) plus (+) ASTM D473 or latest revision(s) thereof, or approved equivalent method, relative to the individual characteristics of the product being tested.

3.17 Viscosity

The specified maximum Viscosity for Fuel Oils provided under this contract shall be as specified in Table I and Table II, elsewhere within this specification. Delivered product having a viscosity greater than that specified for the respective product shall be adjusted in price as specified elsewhere herein for NON-COMPLYING PRODUCT. Delivered product having a viscosity greater than the specified shall be removed from the purchasing agency's tank and replaced with product conforming to specifications, at purchasing agency's discretion based on excessive filter maintenance and/or poor burner performance. The Viscosity shall be determined using - ASTM Test Method D445 (IP #71-84) or latest revision thereof, or approved equivalent method, and ASTM D2161, conversion of Kinematic Viscosity to Saybolt Universal Seconds (SUS) or to Saybolt Furol Seconds (SFS) or latest revision(s) thereof, or approved equivalent method, - relative to the individual characteristics of the product being tested.

After receiving a written request by purchasing agency, the contractor's delivery ticket will state the fuel's viscosity (cSt, SUS, SFS).

3.18 Nitrogen

After receiving a written request by the purchasing agency, the contractor's delivery ticket will state the nitrogen content.

3.19 Sulfur

The specified maximum Sulfur content for Fuel Oils provided under this contract shall be as defined in Table I and II of the detailed specifications and further modified in "Summary of EPA Sulfur Content Requirements". Delivered product having a sulfur content greater than that allowed shall be adjusted in price as specified elsewhere herein for NON-COMPLYING PRODUCT.

Delivered product having a sulfur content greater than that allowed by NYCRR, Title 6 Environmental Conservation Law, Chapter III Air Resources, Subchapter A, Subpart 225-1.2 (d) Table 2 shall be removed from the purchasing agency's tank and replaced with product conforming to specifications. The Sulfur content shall be determined using - ASTM Test Method D129 or D4294 (IP #61/84) or latest revision(s) thereof, or approved equivalent method, relative to the individual characteristics of the product being tested.

NOTE: All No. 2 fuel oil for the purpose of this Solicitation and resulting contract shall have sulfur content no greater than fifteen parts per million, as indicated below, for the life of the contract.

Section §19-0325 of the Environmental Conservation Law requires the following:

§19-0325. SULFUR REDUCTION REQUIREMENTS

1. ON OR AFTER JULY FIRST, TWO THOUSAND TWELVE, ALL NUMBER TWO HEATING OIL SOLD FOR USE IN RESIDENTIAL, COMMERCIAL, OR INDUSTRIAL HEATING WITHIN THE STATE SHALL NOT HAVE A SULFUR CONTENT GREATER THAN FIFTEEN PARTS PER MILLION.

2. THE GOVERNOR MAY, BY ISSUING AN EXECUTIVE ORDER, TEMPORARILY SUSPEND THE APPLICABILITY OF THIS SECTION AT ANY TIME BASED ON THE GOVERNOR'S DETERMINATION, AFTER CONSULTING WITH THE NEW YORK ENERGY RESEARCH AND DEVELOPMENT AUTHORITY, THAT MEETING THE REQUIREMENT OF SUBDIVISION ONE OF THIS SECTION IS NOT FEASIBLE DUE TO LACK OF ADEQUATE SUPPLY OF THE REQUIRED FUEL.

3.20 ASH Content

The specified maximum ASH content for Fuel Oils provided under this contract shall be one tenth (0.10%), or five hundredths (0.05%), of a percent, maximum by weight. These respective maximum ash contents shall be as listed for an individual product in Table I or Table II herein. Additionally, a product having excessive ash content shall be removed and/or adjusted in price as specified elsewhere herein. The Ash content shall be determined using - ASTM Test Method D482 (IP #4/81), or latest revision thereof or approved equivalent method, relative to the individual characteristics of the product being tested.

Delivered product having an ash content above the maximum by greater than two thousandths (0.002%) of a percent above the maximum but less than one tenth (0.10%) of a percent above the maximum shall be adjusted in price as stated elsewhere herein for NON-COMPLYING PRODUCT. Delivered product having an ash content of one tenth (0.10%) of a percent by weight, or greater, above the maximum specified shall be removed from the site upon the State's request and the contractor shall take a deduction on price as stated elsewhere herein regardless of whether the fuel oil delivery is removed or not removed. Respective ash contents shall be listed elsewhere herein.

3.21 BTU per Gallon Content

The specified minimum BTU PER GALLON content for Fuel Oils provided under this contract shall be as specified in Table I, Table II, and elsewhere herein. Delivered product having a BTU PER GALLON content less than the specified percent shall be adjusted in price as specified elsewhere herein for NON-COMPLYING PRODUCT; "Btu content shall be determined using ASTM D240 or latest revision".

GENERAL:

Fuel Oils furnished shall conform to the physical and chemical requirements as listed under Table I, Table II, and to the Sulfur in Fuel limitations listed in the Environmental Protection Agency (EPA) requirement summary below:

3.22 Biodiesel Usage Considerations

There are many positive benefits attributed to the use of biodiesel as compared to normal solely petroleum-based fuel. The most mentioned are decreased emissions of various pollutants, reduced reliance on uncertain petro fuel sources, renewable fuel source and safety in handling. However, there are also a number of properties of biodiesel that potentially impact equipment, storage and OEM warranty coverage. These considerations are detailed below.

Fuel Filters: Fuel filters on the system should be checked frequently upon initial biodiesel blend use and changed as necessary. Biodiesel blends have excellent solvent properties and may affect cellulosic filters due to solubility of resin and binders used in those filters. Glass fiber-based filters manufactured without the use of binders are probably not affected.

Sediment: Use of No. 2 fuel can leave a deposit in the bottom of fueling lines, tanks, and delivery systems over time. The use of biodiesel blends can dissolve this sediment and result in the need to change filters more frequently when first using biodiesel blends until the whole system has been cleaned of the deposits left by the petroleum based No. 2 fuel.

Solvent Properties: Biodiesel blends are an excellent solvent. They can, if left on a painted surface long enough, dissolve certain types of paints. Therefore, it is recommended to wipe any biodiesel blend spills from painted surfaces immediately. In addition, biodiesel blends can soften and degrade certain types of elastomers and natural rubbers over time. These materials may be used in fuel systems. OEM's of systems should be contacted for specific information and concerns in this area.

Spontaneous Combustion: Biodiesel is made from vegetable oils and/or animal fats which can oxidize and degrade over time. The oxidizing process can produce heat. In certain environments a pile of oil-soaked rags can become hot enough to result in a spontaneous fire. Biodiesel soaked rags should be stored in a safety can or dried individually to avoid the potential for spontaneous combustion.

Storage: All fuels have a shelf life. This is also true with biodiesel and biodiesel blends. Available data indicate that biodiesel blends should be used within six months of manufacture. Fuels determined to have a Total Acid Number (by ASTM D664 or latest revision thereof) of greater than 0.80 KOH/g are not recommended for use.

OEM Considerations: BEFORE deciding to use biodiesel, prospective users should make sure they have checked with the manufacturers of their equipment for considerations and concerns related to that usage.

FURTHER INFORMATION: Additional information regarding biodiesel can also be obtained from National Biodiesel Board at (800) 841-5849 or at their website at: <http://www.biodiesel.org/what-is-biodiesel/biodiesel-faq's>

3.23 Finished Fuel Requirements for Biodiesel

MATERIAL: The finished biodiesel blends shall be prepared using the following feedstock:

#2 or #6 Fuel: As described above and meeting the requirements of ASTM D396 (Fuel Oil) or latest revision thereof and those listed in Table 1 of this spec.

B100 Fuel: As described above and meeting the requirements of ASTM D6751.

WORKMANSHIP:

The finished biodiesel blends shall be completely blended to form a homogeneous mixture, visually free from undissolved water, sediment, and suspended matter. It shall be clear and bright when tested in accordance with ASTM D4176 or latest revision thereof procedure 1 or 2.

PHYSICAL AND CHEMICAL REQUIREMENTS:

The biodiesel portion of the finished biodiesel blends shall be 5%, 10%, or 20% by volume of B100 biodiesel with a tolerance ~~of +/-1%~~ as listed in ASTM D7371. Remaining percentage of the final blend shall be composed of #2 fuel. Final blended product shall meet the requirements listed in ASTM D7467 or latest revision thereof.

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 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.

4.4 Content

A complete Bid consists of submission of the following completed documents:

1. Pages 1 and 2 of the Solicitation (PDF);
2. Attachment 1 – *Pricing* (Excel);
3. Attachment 2 – *NYS Required Certifications* (PDF);
4. Attachment 3 – *Encouraging Use of NYS Businesses* (PDF);
5. Proof of compliance with Attachment 4 – *Insurance Requirements* (PDF);
6. Attachment 5 – *Bidder Information Questionnaire* (Excel);

7. Attachment 6 – *Bidder Submission Checklist* (Excel);
8. Attachment 9 – *Certification Under Executive Order No. 16* (PDF);
9. Appendix C – *Federal Funding Agency Mandatory Terms and Conditions*, with Section 10 completed (PDF);
10. EEO 100, *Equal Employment Opportunity Staffing Plan* (PDF);
11. MWBE 100, *MWBE Utilization Plan* (PDF);
12. Vendor Responsibility Questionnaire (completed online);
13. ST-220-CA, *Contractor Certification to Covered Agency* (PDF); and
14. Supplier Certificate (See Section 4.10 ~~and Attachment 13~~) from the refiner or distributor that shows Bidder has an agreement with refiner or distributor and will be provided sufficient fuel oil 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 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.

4.5 Pricing Page Instructions

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

A Bidder shall submit its proposed pricing by Item contained in Attachment 1 – Pricing “Bid Price Submittal Sheet” tab. The price per gallon is based on OPIS as of February 23, 2023. Soy pricing is based on the simple average of the high and low asking price of soybean oil (region Illinois) found in the immediately preceding published Friday USDA AMS 3511 report, which is February 17, 2023, for this bid.

Attachment 1 – Pricing will limit the number of decimal places for a dollar amount that a Bidder enters.

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 #23287)
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 - *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 – IFB 23287

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

Bids will be accepted only from established refiners, distributors, or authorized dealers. Through completion and submission of the Supplier Certificate, the supplier or manufacturer guarantees that the Bidder is an authorized dealer 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. ~~Bidders shall use the certificate attached to this Solicitation to document this level of support (see Attachment 13 – Fuel Supplier Certificate).~~

The Supplier Certificate is to be ~~forwarded by the Bidder to its proposed supplier for completion~~provided by the supplier or manufacturer and ~~returned to~~included with the Bidder's ~~for inclusion with its~~ Bid. 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, Section 39, 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

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

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

4.13 Bid Liability

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

4.14 Firm Offer

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

4.15 NYS Reserved Rights

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

- A. Reject any or all Bids received in response to the Solicitation;
- B. Withdraw the Solicitation at any time at the sole discretion of the State;
- C. Make an award under the Solicitation in whole or in part;
- D. Disqualify any Bidder whose conduct and/or Bid fails to conform to the requirements of the Solicitation;
- E. Seek clarifications and revisions of the Bid;
- F. Amend the Solicitation prior to the Bid opening to correct errors or oversights, or to supply additional information as it becomes available;
- G. Direct Bidders, prior to the Bid opening, to submit Bid modifications addressing subsequent Solicitation amendments;
- H. Change any of the schedule dates with notification through the NYS Contract Reporter;

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

4.16 Incorporation

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

5 METHOD OF AWARD

5.1 Method of Award

Award shall be made to a responsive and responsible Bidder(s) on the basis of one award per item in each county by grade of oil and mode of transport (method of delivery) to the lowest responsive and responsible bidder offering the lowest Total Bid Price per item. A separate award will be made for each item number.

Prices will be truncated to four (4) decimal places and the Total Bid Price will be determined according to the following:

Fuel Oil Bid Price times percentage of petroleum in Fuel Type plus Biodiesel Bid Price times percentage of biodiesel in Fuel Type, (if applicable), equals the Total Bid Price.

EXAMPLE: 2-TW B5 bid price calculation:

#2 Oil Bid Price of \$3.1234 x 95% = \$2.9672(3)
Biodiesel Bid Price of \$4.1234 x 5% = \$0.2061(7)
Total Bid Price = \$3.1733

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

Additionally, in order to attempt to ensure an adequate supply of oil 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.

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.

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

All pricing recommended for award will be subject to comparison to the previous award's pricing and current market trends in order 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.

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

5.2 Notification of Award

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

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

6 TERMS AND CONDITIONS

6.1 Contract Term and Extensions

The Contract will be in effect for a term of up to two years. The Contract term shall commence after all necessary approvals or September 2, 2023 (the later of the two) and shall become effective upon the date of OSC approval of the final executed documents.

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

6.2 Short term Extension

This section shall apply in addition to any rights set forth in Appendix B, *Contract Term – Extension*. In the event a replacement Contract has not been issued, any Contract let and awarded hereunder by the State may be extended unilaterally by the State for an additional period of up to 3 calendar months upon notice to the Contractor with the same terms and conditions as the original Contract and any approved modifications. With

the concurrence of the Contractor, the extension may be for a period of up to 6 calendar months in lieu of 3 calendar months. However, this extension automatically terminates should a replacement Contract be issued in the interim.

6.3 Price

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

Prices quoted shall be billed gross gallons, F.O.B. agency storage tanks. Prices quoted shall include all applicable customs, taxes (e.g., Superfund), license and research fees (e.g. NORA), and surcharges. Bid prices must be expressed in U.S. currency and shall be submitted to four (4) decimal places (priced in dollars per gallon).

Pricing for contract purchases shall be based on the pricing in effect at the time the Authorized User places the order (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 guaranteed delivery timeframe of 48 (forty-eight) hours. For example, the Authorized User orders 500 gallons of fuel oil 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 (e.g., 40,000 gallons or more than a truck load, or delivering over a period of time), the Contractor and Authorized User should contact OGS Procurement Services. OGS's intent is for all parties to have the same expectations for delivery and price.

Truck delivery ticket volumes and Authorized User's gauged volumes must agree within a tolerance of 0.5% of the total delivered volume for delivery volumes greater than 500 gallons and up to 1% for delivery volumes less than or equal to 500 gallons. If the volume difference exceeds the tolerance level, the Authorized User's measured volume, if available, will be used for invoice payment. Authorized Users reserve the right to reject "rogue" trucks which have been identified as having repeated meter inaccuracies. Trucks without sealed and calibrated meters will not be permissible for deliveries.

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

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

Bid prices shall be firm except that price revisions will be permitted in accordance with the PRICE REVISION CLAUSE set forth in this solicitation and with respect to certain taxes and duties as follows:

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

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

The bid price shall include all applicable Federal, State, Local taxes and duties as stated in Appendix B Section 8 “Taxes” included with 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 fuel oil 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 schedule price revision.

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

The 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 fuel thirty days (30) prior to adding to invoices.

6.4 OPIS Posting Locations

The following OPIS Posting Locations have been established for purposes of this solicitation. Contractor’s pricing will be based on the established OPIS Posting Locations identified below.

For biodiesel and Kerosene, a fixed OPIS Posting Location has been established for each county. The fixed OPIS Posting Locations are set forth in the table below and in Attachment 1 – Pricing. Prices posted are Rack prices.

Albany	Buffalo	Long Island*	Newburgh	Syracuse	Utica
Albany**	Allegany	Bronx	Columbia	Broome	Chenango
Clinton	Cattaraugus	Kings	Dutchess	Cayuga	Fulton
Delaware	Chautauqua	Nassau	Greene	Chemung	Hamilton
Essex	Erie	New York	Orange	Cortland	Herkimer
Franklin	Genesee	Queens	Putnam	Schuyler	Jefferson
Otsego	Livingston	Richmond	Rockland	Seneca	Lewis
Rensselaer	Monroe	Suffolk	Sullivan	Steuben	Madison
Saratoga	Niagara	Westchester	Ulster	Tioga	Montgomery
Schenectady	Ontario			Tompkins	Oneida
Schoharie	Orleans			Yates	Onondaga
St Lawrence	Wayne				Oswego
Warren	Wyoming				
Washington					

*For Kerosene the Posting Location will be Newark.

**For #6 the Posting Location will be Boston 0.5%.

Upon Contract award, a Contractor’s pricing will be based on the established OPIS Posting Location designated in Attachment 1 – Pricing.

Should postings differ from 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.

To follow are two historic examples that have occurred.

Example 1 from April 2016

Please be advised that as of April 22, 2016, the weekly fuel price adjustments for Buffalo kerosene will be based solely on the low posting published in OPIS's Oil Price Daily, as was the basis of the original bid (June 19, 2014) and award (November 20, 2014), due to inconsistent reporting of both a high and a low posted price.

Example 2 from February 2016

Please be advised that as of January 29, 2016, the weekly fuel price adjustments for Utica kerosene will be based solely on the low posting published in OPIS's Oil Price Daily, as was the basis of the original bid (June 19, 2014) and award (November 20, 2014), due to inconsistent reporting of both a high and a low posted price.

Example 3 from March 2022

As per the terms and conditions of the contract (Section 2.15 Calculation Change or Substitution), please be advised that as of March 11, 2022, the weekly fuel price adjustments for Soybean Oil will be based on the simple average of the high and low asking price of soybean oil (region Illinois) found in the immediately preceding published Friday USDA AMS 3511 report.

6.4.1 Location Change or Substitution

Should the designated posting locations become unavailable or differ from the current description and/or format, a posting determined by the Commissioner in her/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 her/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 Saving/Force Majeure clause of Appendix B), the new product and price 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 for fuel grades shall be firm except that price revisions will be permitted in accordance with the following procedures:

Price revisions (increases or decreases) to the original contract price shall be based on prices posted in the OPIS Oil Price Daily every Thursday. The Bidder shall use the reference as designated in Attachment 1 - Pricing on a per item basis. Bidders are restricted to the postings as indicated in Attachment 1 of this solicitation ONLY. Selection of alternate listings will NOT be permitted.

The low price shown in the OPIS Oil Price Daily postings 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 February 23, 2023 and the Posted Price on every Thursday during the contract period beginning with the OPIS Oil Price Daily the Thursday immediately preceding the contract start date. If the OPIS Oil Price Daily is not posted on Thursday, the previous business day's posting in which the specified prices are available will be utilized. Base prices are listed in this Solicitation, for each reference. The term "Posting Day" or "Posted Price" as used throughout the Solicitation and any resulting Contract refers to the actual day the prices are posted.

Should postings become unavailable or differ from current descriptions and/or format, a posting determined, by the Commissioner, in his or her sole discretions, to be most reflective of market conditions will be used. Corrections to prices 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.

Should the weekly price revision cycle not provide adequate price adjustments, because of rapid changes in worldwide petroleum prices, the State reserves the right to increase the frequency of the price revisions to a basis that best reflects market conditions. For example, a possible basis could utilize Monday's Daily OPIS publication for Tuesday through Thursday prices and weekend prices would continue with Thursday's OPIS Daily publication for Friday through Monday.

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

- (1) Price increases are limited to changes in the OPIS Posting Location as listed in Section 6.4 – OPIS Posting Locations. 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.
- (2) Price adjustments will continue using the same method if the contract is extended or renewed.
- (3) The contract price and any adjustments will only be carried out to four (4) decimal places (priced in dollars per gallon).

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

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 a posting location become unavailable or unworkable, the Commissioner reserves the right to switch to the most appropriate index and/or location, and adjust the bid price accordingly (see OPIS Posting Location examples).

6.8 Prevailing Wage Rates – Public Works and Building Services 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, 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 # 2023900194**

For access to the Department of Labor (DOL) Public Works information including Prevailing Wage Schedule and updates, use the following link:

<https://www.labor.ny.gov/workerprotection/publicwork/PWContents.shtm>

Important Note: The above PRC number MUST be noted on all purchase orders issued for purchase 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).

6.9.1 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.

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

6.10 Minimum Order

Minimum delivery shall be 150 gallons to each delivery location (site) as determined by the Delivery Schedule. Minimum order for Motor Transport deliveries shall be 5,500 gallons. Deliveries under 150 gallons are at the Contractor’s option, except for tank top-offs for testing.

All deliveries requested by an Authorized User of less than the minimum order size, including tank top-offs for tank testing, shall qualify for contract pricing. The following tiered schedule may be utilized by the Contractor:

Determination for total gross tank capacity shall include all manifolded tanks. All locations granted a request from the Contractor for “automatic replenishment” per section 6.14, shall be exempt from minimum order requirements, including other factors out of the control of Authorized Users (e.g., short filling, mechanical issues, inadequate fuel supply). In no case shall a surcharge be applied to a location while on “automatic replenishment.”

Tank Capacity (in gallons)	Amount Delivered	Optional Surcharge
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275 or more	Under 150 to 75	\$50.00
	Under 75	\$75.00
Tank Capacity (in gallons)	Amount Delivered	Optional Surcharge
Less than 275	Under 150 to 75	\$25.00
	Under 75	\$50.00

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

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

6.11 Invoicing and Payment

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

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

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

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

Contractors and Authorized Users are expected to proactively work together to resolve invoicing issues in order to avoid delays in payment with the expectation that payment would be made in 45 days or less.

6.12 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. Every bid

states what the maximum time a delivery will take from the moment of order, but the time shall never exceed forty-eight (48) hours. In State declared emergencies, fuel must be delivered within eight (8) to twelve (12) hours of notification. Should there be an after-hours or weekend emergency, or should agency run out of fuel oil at any time creating an emergency situation, the Contractor shall be required to provide product within four (4) hours of a telephone call from the agency.

Delivery shall be made in accordance with instructions on the Purchase Order from each Authorized User. If there is a discrepancy between the Purchase Order and what is listed on the Contract, it is the Contractor's obligation to seek clarification from the ordering Authorized User and, if applicable, from OGS, Procurement Services. On occasion, to prevent fuel run outs during storms or other emergency situations, the Contractor must allow Authorized Users the flexibility to manually schedule deliveries to top-off tank inventories. Normal deliveries are considered to be Monday thru Friday (8:00 am - 5:00 pm). Saturday/Sunday deliveries are not standard and are to be made on an emergency basis (and not a regular basis) ONLY, unless mutually agreed between the Contractor and Authorized User, or if a run out is imminent before the next normal delivery day. Delivery of heating oil 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 heating fuel on the open market to fill such tank or tanks and to charge any increase in price paid over the current contract price to the account of the Contractor.

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

6.13 Method of Delivery

TW: Delivery by tank wagon into storage tanks of less than 5,500 gallons at one time into one tank.

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

Fuel oil tank wagon deliveries shall be delivered by tank wagons used exclusively for transporting No. 2 biofuels.

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 with a total gross capacity equal to or greater than 375 gallons. Automatic replenishment for tank capacities less than 375 gallons will be at the Contractor's option and may be subject to a minimum order charge (see Section 6.10). Determination for total gross tank capacity shall include all manifolded tanks. The Contractor shall maintain a record of the estimated consumption of biodiesel and kerosene, as the case may be using the "degree day" or equivalent method and shall replenish the Authorized User's tank or tanks without further notice from the Authorized User, whenever necessary to ensure 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 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 another vendor to supply fuel oil into any Contractor-owned tank(s) if applicable 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 5,500
15%	5,500 and over

6.15 Delivery Schedules

The delivery schedules are based on Authorized Users’ requirements submitted to Procurement Services by Requirement Letter RL220, and as subsequently updated and confirmed with Authorized Users as shown in Section 1.2 and Attachments 10 and 11. The delivery schedules 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. Bidders should therefore make note of the revisions. This information is available to clarify delivery conditions, where possible. Any specific questions regarding the site conditions should be directed to the end-user via any communication available, as shown on the Delivery Schedules. 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 list 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 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 as of the date of the Bid, shall be eligible to receive deliveries and/or be added to the Delivery Schedule at a Contractor's option. This being done upon placement of a valid purchase order (or other ordering mechanism between the contractor and the ordering entity) to the Contractor's address as indicated in the award. Contractors must notify OGS of any new business created from Authorized Users’ request for delivery so that OGS Procurement Services can make adjustments to the delivery schedules to capture these new accounts. All cases shall require Contractors to notify both Authorized User and OGS of any locations not identified on the Delivery Schedules within 30 days after the first delivery. 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 schedules.

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 may not catch all errors.

6.16 Fuels #2 B5, #2 B10, #2 B20, and #6 B5

Fuel Oil #2 biodiesel pricing shall be based on the OPIS Oil Price Daily No. 2 Oil plus a percentage of the Soybean Oil price based on the posted simple average of the high and low asking price of soybean oil (region Illinois) found in the immediately preceding published Friday USDA AMS 3511 report.

Fuel Oil #6 biodiesel pricing shall be based on 95% of the OPIS Oil Price Daily No. 6 Oil plus 5% of the Soybean Oil price based on the posted simple average of the high and low asking price of soybean oil (region Illinois) found in the immediately preceding published Friday USDA AMS 3511 report.

Follow these steps to compute No. 2B5, 2B10, and 2B20 price change using Albany Posting Location:

EXAMPLE

- Convert Soybean Oil price from lbs. to gallons using the multiplier of 7.6465 (using the simple average of the high and low asking price of soybean oil (region Illinois) found in the immediately preceding published Friday USDA AMS 3511 report Calculate 5% / 10% / 20% of converted weekly Soybean Oil price per gallon
- Calculate 95% / 90% / 80% of the No. 2 fuel oil average posted price specific to fuel type (OPIS Oil Price Daily Thursday's posting)
- Add Soybean Oil price to Fuel Oil price
- Add/Subtract total from base price (see Section 6.5 of the Solicitation) Based on a + or – figure
- Add this adjustment to your initial bid price each week

These prices become effective on Friday of each week for the entire contract.

6.17 Product Returns 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 shipments, outdated Product, incorrect Product shipped, Contractor errors otherwise not specified, or Products returned or exchanged due to Authorized User errors, shall be replaced with specified Products or the Authorized User shall be credited or refunded for the full purchase price.

Products shall be replaced within 10 business days 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.

6.18 Unanticipated Excessive Purchase

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

6.19 Contract Administration

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

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

6.20 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/>.

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

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

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

6.22 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 (MWBs), small business enterprises (SBEs), or Service-Disabled Veteran-Owned Businesses (SDVOBs).

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

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

This Contract may be terminated if, on the one-year anniversary date of the Contract Award, and annually thereafter, the reports required to be filed under this Section show that the Contractor has made no sales to any Authorized User under the Contract for the prior year. Termination of the Contract under this Section is in addition to Appendix B – *Termination*, and shall take effect upon written notification to the Contractor. The Contract may also be terminated for failure to file the reports required under this Section.

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

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, liquidated damages pursuant to clause IX of this section, and/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. 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)

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 during the previous quarter 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>
 The Workforce Audits must be completed electronically in the NYS Contract System Workforce Audit Module. Separate audits shall be completed by Contractor and all subcontractors, and the Contractor is responsible for ensuring timely submission of the Workforce Audit by their subcontractors. 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, 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. OGS hereby establishes an overall goal of 30% for MWBE participation, 15% for Minority-Owned Business Enterprises (“MBE”) participation and 15% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs). A 20% overall goal in the NYC and Mid-Hudson region, 10% in the Long Island, Mohawk Valley, and Capital Region, and 5% in the Finger Lakes and Western region. The remaining NYS counties have 0% MWBE goals, which includes; Broome, Cayuga, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Greene, Hamilton, Jefferson, Lewis, St. Lawrence, Madison, Onondaga, Oswego, Rensselaer, Seneca, Tioga, Tompkins, Warren, and Washington. The total Contract goal can be obtained by utilizing any combination of MBE and /or WBE participation for subcontracting and supplies acquired under the Contract.

REGION/COUNTY	OVERALL GOAL	MBE	WBE
<u>Capital Region:</u> Albany, Saratoga, Schenectady	10%	0%	10%
<u>NYC Region:</u> Bronx, Kings, New York, Queens, Richmond	20%	10%	10%

<u>Mid-Hudson Region:</u> Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, Westchester	20%	10%	10%
<u>Long Island Region:</u> Nassau, Suffolk	10%	5%	5%
<u>Mohawk Valley Region:</u> Herkimer, Montgomery, Oneida, Schoharie	10%	0%	10%
<u>Finger Lakes/Western Region:</u> Erie, Livingston, Monroe, Orleans	5%	0%	5%

- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract goals established in clause IV-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address: <https://ny.newnycontracts.com/>. The MWBE Regulations are located at 5 NYCRR § 140 – 145. Questions regarding compliance with MWBE participation goals should be directed to the Designated Contacts within the OGS Office of Business Diversity. 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.
- C. Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract (see clause VII below).

V. MWBE Utilization Plan

- A. In accordance with 5 NYCRR § 142.4, Bidders are required to submit a completed Utilization Plan on Form MWBE 100 with their bid.
- B. The Utilization Plan shall list the MWBEs the Bidder intends to use to perform the Contract, a description of the Contract scope of work the Bidder intends the MWBE to perform to meet the goals on the Contract, the estimated or, if known, actual dollar amounts to be paid to an MWBE. By signing the Utilization Plan, the Bidder acknowledges that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by New York State Certified MWBEs after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OGS.
- C. By entering into the Contract, Bidder/Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. When an MWBE is serving as a broker on the Contract, only 25 percent of all sums paid to a broker shall be deemed to represent the commercially useful function performed by the MWBE
- D. OGS will review the submitted MWBE Utilization Plan and advise the Bidder of OGS acceptance or issue a notice of deficiency within 30 days of receipt.
- E. If a notice of deficiency is issued; Bidder agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the Bidder and direct the Bidder to submit, within five (5) business days of notification by OGS, a request for a partial or total waiver of MWBE participation goals on Form BDC 333.1. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- F. OGS may disqualify a Bidder’s bid/proposal as being non-responsive under the following circumstances:
 - (a) If a Bidder fails to submit an MWBE Utilization Plan;
 - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
 - (c) If a Bidder fails to submit a request for waiver; or

- (d) If OGS determines that the Bidder has failed to document good faith efforts.
- G. If awarded a Contract, Contractor certifies that it will follow the submitted MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in clause IV-A of this Section.
- H. Bidder/Contractor further agrees that a failure to submit and/or use such completed MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OGS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.
- VI. Request for Waiver
- A. Prior to submission of a request for a partial or total waiver, Bidder shall contact the Designated Contacts listed on page 1 of this document for guidance.
- B. In accordance with 5 NYCRR § 142.7, a Bidder/Contractor who is able to document good faith efforts to meet the goal requirements, as set forth in clause VII below, may submit a request for a partial or total waiver on Form BDC 333.1, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its MWBE Utilization Plan. If a request for waiver is submitted with the MWBE Utilization Plan and is not accepted by OGS at that time, the provisions of clauses V(C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) business days of receipt.
- C. Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If OGS, upon review of the MWBE Utilization Plan and Monthly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE contract goals.
- VII. Required Good Faith Efforts
- In accordance with 5 NYCRR § 142.8, Contractors must document their good faith efforts toward utilizing MWBEs on the Contract. Evidence of required 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.
- VIII. Monthly MWBE Contractor Compliance Report
- A. In accordance with 5 NYCRR § 142.10, Contractor is required to report Monthly MWBE Contractor Compliance to OGS during the term of the Contract for the preceding month's activity, documenting progress made towards achievement of the Contract MWBE goals. OGS requests that all Contractors use the New York State Contract System ("NYSCS") to report subcontractor and supplier payments made by Contractor to MWBEs performing work under the Contract. The NYSCS may be accessed at <https://ny.newnycontracts.com/>. This is a New York State-based

- system that all State agencies and authorities will be implementing to ensure uniform contract compliance reporting throughout New York State.
- B. When a Contractor receives a payment from a State agency, it is the Contractor's responsibility to pay its subcontractors and suppliers in a timely manner. On or after the first day of each month, the Contractor will receive an email or fax notification ("audit notice") indicating that a representative of its company needs to log-in to the NYSCS to report the company's MWBE subcontractor and supplier payments for the preceding month. The Contractor must also report when no payments have been made to a subcontractor or supplier in a particular month in the NYSCS. Once subcontractor and supplier payments have been entered into the NYSCS, the subcontractor(s) and supplier(s) will receive an email or fax notification advising them to log into the NYSCS to confirm that they actually received the reported payments from the Contractor. It is the Contractor's responsibility to educate its MWBE subcontractors and suppliers about the NYSCS and the need to confirm payments made to them in the NYSCS.
 - C. To assist in the use of the NYSCS, OGS recommends that all Contractors and MWBE subcontractors and suppliers sign up for the following two webinar trainings offered through the NYSCS: "**Introduction to the System - Vendor training**" and "**Contract Compliance Reporting - Vendor Training**" to become familiar with the NYSCS. To view the training schedule and to register visit: <https://ny.newnycontracts.com/FrontEnd/TrainingList.asp>
 - D. As soon as possible after the Contract is approved, Contractor should visit <https://ny.newnycontracts.com> and click on "**Vendor Account Lookup**" to identify the Contractor's account by company name. Contact information should be reviewed and updated if necessary by choosing "**Change Info.**" It is important that the staff member who is responsible for reporting payment information for the Contractor be listed as a user in the NYSCS. Users who are not already listed may be added through "**Request New User.**" When identifying the person responsible, please add "**- MWBE Contact**" after his or her last name (i.e., John Doe – MWBE Contact) to ensure that the correct person receives audit notices from the NYSCS. NYSCS Technical Support should be contacted for any technical support questions by clicking on the links for "**Contact Us & Support**" then "**Technical Support**" on the NYSCS website.
 - E. If Contractor is unable to report MWBE Contractor Compliance via the NYSCS, Contractor must submit a Monthly MWBE Contractor Compliance Report on Form MWBE 102 to OGS, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: OGS OBD Office, 29th floor Corning Tower, Empire State Plaza, Albany, NY 12242. Phone: 518-486-9284; Fax: 518-486-9285.
 - F. It is the Contractor's responsibility to report subcontractor and supplier payments. Failure to respond to payment audits in a timely fashion through the NYSCS, or by paper to OGS, may jeopardize future payments pursuant to the MWBE liquidated damages clause in clause IX below.
- IX. Breach of Contract and Liquidated Damages
- A. Where OGS determines that the Contractor is not in compliance with the MWBE requirements of this Section, and the Contractor refuses to comply with such requirements, or if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, the Contractor shall be obligated to pay liquidated damages to OGS.
 - B. Such liquidated damages shall be calculated as an amount equaling the difference between:
 - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
 - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
 - C. If OGS determines that Contractor is liable for liquidated damages and such identified sums have not been withheld by OGS, Contractor shall pay such liquidated damages to OGS within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.
- X. **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 Certified Service-Disabled Veteran Owned Businesses

Article 3 of the Veterans' Services 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 Environmental Attributes and NYS Executive Order Number 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.

6.27 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.

6.28 Diesel Emission Reduction Act

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

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

6.29 Guarantee

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

This liability includes but is not limited to oil spills occurring during delivery. The Contractor shall provide constant surveillance during delivery by having a person in attendance at all times at the point of transfer. 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.

6.30 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.

6.31 Bulk Delivery and Alternate Packaging

New York State encourages the use of innovative packaging that reduces the weight of packaging and the generation of packaging waste. A Contractor is encouraged to use reusable materials and containers and to utilize packaging configurations that take advantage of storage containers designed to be part of the Product for the shipment of multi-unit purchases. New York State recognizes that these packaging methods are in the development stage and may not be currently available. Authorized Users are urged to inquire about these programs at the time of purchase and determine the best solution for their needs.

6.32 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.

6.33 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.

6.34 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.

6.35 Extension of Use

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

6.36 New Accounts

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

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

6.37 Drug and Alcohol Use Prohibited

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

6.38 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.

6.39 Samples

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

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

- B. **Enhanced Samples** - When an approved sample exceeds the minimum specifications, all Product delivered must be of the same enhanced quality and identity as the sample. Thereafter, in the event of a Contractor's default, the Commissioner may procure a Product substantially equal to the enhanced sample from other sources, charging the Contractor for any additional costs incurred.
- C. **Conformance with Samples** - Submission of a sample (whether or not such sample is tested by, or for, the Commissioner) and approval thereof shall not relieve the Contractor from full compliance with all terms and conditions, performance related and otherwise, specified in the Solicitation. If in the judgment of the Commissioner the sample or Product submitted is not in accordance with the specifications or testing requirements prescribed in the Solicitation, the Commissioner may reject the Bid. If an award has been made, the Commissioner may cancel the Contract at the expense of the Contractor.
- D. **Testing** - All samples are subject to tests in the manner and place designated by the Commissioner, either prior to or after Contract award. Unless otherwise stated in the Solicitation, Bidder samples consumed or rendered useless by testing will not be returned to the Bidder. Testing costs for samples that fail to meet Contract requirements may be at the expense of the Contractor.
- E. **Requests for Samples by Authorized Users** - Requests for samples by Authorized Users require the consent of the Contractor. Where Contractor refuses to furnish a sample, Authorized User may, in its sole discretion, make a determination on the performance capability of the Product or on the issue in question.

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.

6.41 Appendix B Modifications

The following Appendix B clauses are hereby modified for the purposes of this solicitation:

- A. Section 46, *Default – Authorized User*, b *Failure to Make Payment*, is deleted and replaced with the following language:

b. Failure to Make Payment In the event a participating Authorized User fails to make payment to the Contractor for Products delivered, accepted and properly invoiced, within 60 calendar days of such delivery and acceptance, the Contractor may, upon five business days advance written notice to both the Commissioner and the Authorized User's purchasing official, suspend additional provision of Products to such entity until such time as reasonable arrangements have been made and assurances given by such entity for current and future Contract payments.

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