

**AGREEMENT FOR  
FUEL OIL, HEATING (GRADES #2, #4, #6,  
KEROSENE AND BIOHEATING FUEL) (STATEWIDE)**

**BY AND BETWEEN**

**NEW YORK STATE**

**OFFICE OF GENERAL SERVICES**

**AND**

---

**CONTRACT NUMBER PC\_\_\_\_\_**



**Office of  
General Services**

**Procurement  
Services**

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**STATE OF NEW YORK  
OFFICE OF GENERAL SERVICES  
AGREEMENT # PC \_\_\_\_\_  
CENTRALIZED CONTRACT FOR THE ACQUISITION OF  
FUEL OIL, HEATING (GRADES #2, #4, #6,  
KEROSENE AND BIOHEATING FUEL) (STATEWIDE)**

THIS AGREEMENT (hereinafter the “Contract” or the “Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, **2022**, by and between the People of the State of New York, acting by and through the **Commissioner of the Office of General Services** (OGS), whose office is on the 36<sup>th</sup> Floor, Corning Tower, Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242 (hereinafter referred to as the “State” or “OGS”) and \_\_\_\_\_, having its principal place of business at \_\_\_\_\_ (hereinafter referred to as the “Contractor”). OGS and the Contractor are collectively referred to as the “Parties.”

WHEREAS, OGS is statutorily authorized to enter into centralized contracts for commodities for use by New York State agencies, departments, public authorities, political subdivisions and any other entities authorized by statute to utilize its centralized contracts (hereinafter “Authorized Users”); and

WHEREAS, OGS has identified a need by New York State agencies and other Authorized Users for Fuel Oil, Heating (Grades #2, #4, #6, Kerosene and Bioheating Fuel), as further described herein; and

WHEREAS, OGS conducted a competitive procurement to identify the bidder(s) which could provide the Fuel Oil, Heating (Grades #2, #4, #6, Kerosene and Bioheating Fuel) at the lowest cost, referred to as IFB #23274 (hereinafter the “IFB” or the “Solicitation”), which was advertised on September 15, 2022 in the New York State Contract Reporter, as required by New York State Economic Development Law; and

WHEREAS, awards were made to Contractors per Item(s) to the responsible bidder that submitted the lowest cost responsive proposal by Item and mode of transport in each county, in accordance with the method of award set forth in the IFB; and

WHEREAS, the State has determined: that the Contractor submitted the lowest cost responsive proposal for the applicable Item(s) as described herein; that the Contractor is a responsible vendor; and that the Contractor is willing to provide the commodities set forth herein under the terms and conditions contained herein;

NOW THEREFORE, in consideration of the terms hereinafter mentioned and also the mutual covenants and obligations moving to each party hereto from the other, the Parties hereby agree as follows:

# 1. INTRODUCTION

## 1.1. OVERVIEW AND SCOPE

The purpose of this Contract is to provide Authorized Users with a means of acquiring various grades of Fuel Oil, Heating (Grades #2, Kerosene, and biodiesel) by bulk delivery to an Authorized User's storage facility for use by the Authorized User. The product shall be Contractor furnished, delivered and unloaded as specified herein.

This Contract is based on the fuel oil (heating) requirements submitted to OGS by Authorized Users in various counties. The specific Authorized Users, counties and tank types are listed in the Delivery Schedule. See Attachments 2 and 3.

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 latest revision(s) thereof, or approved equivalent method, except as listed differently elsewhere herein.

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

This Contract includes the following fuel types for the following counties:

COUNTY	FUEL TYPE	OPIS POSTING LOCATION
<b>Broome</b>	2-MT	Syracuse
<b>Cattaraugus</b>	2-MT	Buffalo
<b>Clinton</b>	2-TW	Albany
<b>Clinton</b>	2-TW B2	Albany/USDA
<b>Clinton</b>	KERO (Heating)	Albany
<b>Erie</b>	2-MT	Buffalo
<b>Essex</b>	2-MT	Albany
<b>Essex</b>	2-TW B2	Albany/USDA
<b>Essex</b>	KERO (Heating)	Albany
<b>Franklin</b>	2-MT	Albany
<b>Franklin</b>	2-TW	Albany
<b>Franklin</b>	2-TW B2	Albany/USDA
<b>Franklin</b>	KERO (Heating)	Albany
<b>Fulton</b>	2-MT	Utica
<b>Herkimer</b>	2-MT	Utica
<b>Jefferson</b>	2-MT	Utica
<b>Livingston</b>	2-MT	Buffalo
<b>Livingston</b>	2-MT B2	Buffalo
<b>Montgomery</b>	2-MT	Utica
<b>Oneida</b>	2-MT	Utica
<b>Oswego</b>	2-MT	Utica
<b>Rockland</b>	2-MT	Newburgh
<b>Rockland</b>	2-TW	Newburgh
<b>St. Lawrence</b>	2-MT	Albany
<b>St. Lawrence</b>	KERO (Heating)	Albany
<b>Tioga</b>	2-MT	Syracuse

## 1.2. ESTIMATED QUANTITIES

This Contract is 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 this Contract. These Authorized Users have agreed not to enter into any other contracts for Fuel Oil (Heating) they filed for during the Contract period, and will purchase all their Fuel Oil (Heating) requirement needs from awarded contracts. No specific quantities are represented or guaranteed and the State provides no guarantee of individual Authorized User participation. The Contractor must furnish all quantities actually ordered at or below the Contract prices. The individual value of this Contract is indeterminate and will depend upon the number of contracts issued and the competitiveness of the pricing offered. See Section 2.30, Delivery Schedules.

Numerous factors could cause the actual quantities of Products purchased under this Contract to vary substantially from the estimated quantities. 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 this Contract is indeterminate and will depend upon actual Authorized User demand and actual quantities ordered during the Contract term.
- The State reserves the right to terminate this 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.
- Contract pricing that is lower than anticipated could result in a higher quantity of purchases by Authorized Users than anticipated.
- In accordance with Section 2.30, Delivery Schedules, the Contractor 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 and may accept orders for any non-State Agency or Political Subdivision not appearing on the Delivery Schedule.
- Contract pricing that is higher than anticipated could result in a lower quantity of purchases by Authorized Users than anticipated.

Contractor acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the Contract could vary substantially from the estimated quantities provided.

## 1.3. NYS Comptroller Approval

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

## 1.4. DEFINITIONS AND ACRONYMS

**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.

**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. ASTM D6751 covers low sulfur biodiesel (B100) for use as a blend component with diesel or other fuel oils.

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

**Delivery:** The act of taking an ordered product to a person or place. Refer to Section 2.26, Product Delivery.

**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:** The acronym, “IP” shall be used as a designation for the Institute of Petroleum.

**Item:** 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:** 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 or M/WBE:** 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 used.

**No. 2B2 (#2B2):** The symbol No. 2B2 or #2B2 shall be used as a grade designation for distillate fuel oil that is a mix of 98% petroleum and 2% soy based product meeting the requirements of ASTM D396 (Fuel Oil).

**No. 2B5 (#2B5):** The symbol No. 2B5 or #2B5 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 (Fuel Oil).

**NYS Holidays:** 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; Martin Luther King, Jr. Day; Washington’s Birthday (observed); Memorial Day; Juneteenth; Independence Day; Labor Day; Columbus Day; Veteran’s Day; Thanksgiving Day; and Christmas Day.

**NYS Vendor ID:** The ten-character identifier issued by New York State when a vendor is registered on the Vendor File.

**Posting Day and Posted Price:** The actual OPIS day the prices are posted.

**Preferred Source Products:** Those Products that have been approved in accordance with State Finance Law § 162.

**Preferred Source Program:** 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 agency, political subdivisions and public benefit corporations (including most public authorities).

**Procurement Services:** A business unit of OGS, formerly known as New York State Procurement (“NYSPPro”) and Procurement Services Group (“PSG”).

**Prompt Delivery:** Any delivery that is completed within the Contractor’s specified guaranteed delivery time.



**Prompt Will-call:** The time an Authorized User places an order.

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

## 2. CONTRACT TERMS AND CONDITIONS

This section sets forth the terms and conditions of the Contract.

### 2.1. CONTRACT DOCUMENTS AND CONFLICT OF TERMS

This Contract is composed of the documents set forth below. In the case of any conflict(s) among these documents, conflicts shall be resolved in the following order of precedence:

1. Appendix A, *Standard Clauses for New York State Contracts (October 2019)*
2. This document
3. Appendix C, Federal Funding Agency Mandatory Terms and Conditions
4. Appendix B, *General Specifications (April 2016)*; and
5. Attachment 4 – Insurance Requirements
6. Attachment 1 – Pricing
7. Attachment 2 – Delivery Schedule – State Agencies
8. Attachment 3 – Delivery Schedule – Political Subdivisions, Local Governments and Other Eligible Non-State Agencies
9. Attachment 5 – Report of Contract Usage
10. Attachment 6 – Fuel Supplier Certificate

### 2.2. CONTRACT TERM AND EXTENSIONS

This Contract will be in effect for a term of 9 months, ending September 1, 2023. The Contract term shall commence after all necessary approvals or on December 2, 2022 (the later of the two) and shall become effective upon the date of OSC approval of the final executed documents and upon mailing or electronic communication of the final executed documents to the Contractor.

This Contract and all OGS Centralized Contracts resulting from the IFB award shall have a co-terminus end date, notwithstanding non-renewals or contract cancelations.

### 2.3. SHORT TERM EXTENSION

This section shall apply in addition to any rights set forth in Appendix B, *Contract Term – Extension*. In the event a replacement Contract has not been issued, any Contract let and awarded hereunder by the State may be extended unilaterally by the State for an additional period of up to three months upon notice to the Contractor with the same terms and conditions as the original Contract and any approved modifications. Filed Requirements and Delivery Schedules may be updated by OGS for any mutually agreed upon extension. With the concurrence of the Contractor, the extension may be for a period of up to six months in lieu of three months. However, this extension automatically terminates should a replacement Contract be issued in the interim.

### 2.4. NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS

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

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

**2.5. NEW ACCOUNTS**

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

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

**2.6. EXTENSION OF USE**

This Contract 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.

**2.7. NEW YORK STATE VENDOR RESPONSIBILITY**

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.

**2.8. CONTRACTOR REQUIREMENTS AND PROCEDURES FOR BUSINESS PARTICIPATION OPPORTUNITIES FOR NYS CERTIFIED M/WBE AND EEO FOR MINORITY GROUP MEMBERS AND WOMEN**

**I. NEW YORK STATE LAW**

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations ("NYCRR"), the New York State Office of General Services ("OGS") is required to

promote opportunities for the maximum feasible participation of New York State-certified Minority- and Women-Owned Business Enterprises (“MWBEs”) and the employment of minority group members and women in the performance of OGS contracts.

## **II. GENERAL PROVISIONS**

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

## **III. Equal Employment Opportunity (EEO)**

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

To ensure compliance with this section, the Contractor agrees to submit, or has submitted with the Bid, a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.
- C. NYS Contract System Workforce Utilization Reporting Module (Commodities & Services)

1. The Contractor shall complete and shall require each of its subcontractors to complete a Workforce Audit on a quarterly basis throughout the term of this Contract, by the 10th day of April, July, October, and January. To report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. Contractor shall coordinate with its subcontractors to ensure that all workers associated with this Contract are properly counted and reported. To prepare the report, Contractor and its subcontractors shall use the NYS Contract System Workforce Audit Module found at the following website: <https://ny.newnycontracts.com>.
2. Separate audits shall be completed by Contractor and all subcontractors utilized on this contract and the Contractor is responsible for ensuring timely submission of the Workforce Audit by their subcontractors.
3. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall complete the Workforce Audit and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall complete the Workforce Audit and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.

- D. Contractor shall comply with the provisions of the Human Rights Law and all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

#### IV. Contract Goals

- A. For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers, or suppliers to Contractor. Contractor is, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>.

Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

- B. Good Faith Efforts

Pursuant to 5 NYCRR § 142.8, evidence of good faith efforts shall include, but not be limited to, the following:

1. A list of the general circulation, trade, and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers, copies of such solicitations, and any responses thereto.
2. A list of the certified MWBEs appearing in the Empire State Development ("ESD") MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.

3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with, or obtaining supplies from, certified MWBEs.
4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
5. Dates of any pre-bid, pre-award, or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
6. Other information deemed relevant to the request.

V. Fraud

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

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

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

**2.9. PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES**

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

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Contractor is 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, 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://www.ogs.ny.gov/veterans/default.asp>

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

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

**2.10. CONTRACTOR INSURANCE REQUIREMENTS**

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

**2.11. NEW YORK STATE STATEWIDE FINANCIAL SYSTEM**

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

The State is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure Products in SFS. This application provides catalog capabilities. Contractors with Centralized Contracts have the ability to provide a "hosted" or "punch-out" catalog that integrates with SFS and is available to

Authorized Users via a centralized eMarketplace website. Additional information may be found at: <https://nyspro.ogs.ny.gov/content/nys-emarketplace-1>

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

The State is also implementing the PeopleSoft Inventory module in the near future to track inventory items within the item master table. Further information regarding business processes, interfaces, and file layouts may be found at: [www.sfs.ny.gov](http://www.sfs.ny.gov) and <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>

## **2.12. PRICE**

Contract pricing is set forth in Attachment 1 – Pricing.

Prices quoted shall be billed gross gallons, F.O.B. agency storage tanks. Prices quoted shall include all applicable customs, taxes, license and research fees (e.g. NORA), and surcharges.

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 24 (twenty-four) 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 Contract 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 Contract User's measured volume, if available, will be used for invoice payment. Contract 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 this Contract.

If the Contractor extends allowances during the term of this 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.

Prices shall be firm except that price revisions will be permitted in accordance with the PRICE REVISION CLAUSE set forth in this Contract 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 price shall include all applicable Federal, State, Local taxes and duties as stated in Appendix B Section 8 “Taxes” included with this Invitation for Bids.

**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 this Contract 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 Contract price 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.

**2.13. FUELS #2 B2 and #2 B5**

The B2 biodiesel pricing shall be based on 98% of the OPIS Oil Price Daily No. 2 Oil plus 2% of the Soybean Oil price based on the posted price of Soybean Oil per pound as shown in USDA AMS 3511 report for each Thursday's published Price.

The B5 biodiesel pricing shall be based on 95% of the OPIS Oil Price Daily No. 2 Oil plus 5% of the Soybean Oil price based on the posted price of Soybean Oil per pound as shown in USDA AMS 3511 report for each Thursday's published Price.

Follow these steps to compute No. 2B2 & 2B5 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 2% / 5% of converted weekly Soybean Oil price per gallon
- Calculate 98% / 95% 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 2.14 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.

**2.14. OPIS POSTING LOCATIONS**

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

For Fuel No. 2, No.2B2, No. 2B5 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.

<b>Albany</b>	<b>Buffalo</b>	<b>Long Island</b>	<b>Newburgh</b>	<b>Syracuse</b>	<b>Utica</b>
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	Suffolk	Putnam	Schuyler	Jefferson

Otsego	Livingston	Richmond	Rockland*	Seneca	Lewis
Rensselaer	Monroe	Westchester*	Sullivan	Steuben	Madison
St Lawrence	Niagara	Queens	Ulster	Tioga	Montgomery
Saratoga	Ontario			Tompkins	Oneida
Schenectady	Orleans			Yates	Onondaga
Schoharie	Wayne				Oswego
Warren	Wyoming				
Washington					

*\*For Kerosene the Posting Location will be New Haven.*

**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 three 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.

**2.15. 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.

**2.16. 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.

**2.17. 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.

**2.18. 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 Contractor shall use the reference as designated in Attachment 1 - Pricing



on a per item basis. Contractor is restricted to the postings as indicated in Attachment 1 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 August 25, 2022 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 Contract, for each reference. The term "Posting Day" or "Posted Price" as used throughout the 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 discretion, to be most reflective of market conditions will be used. The same applies if OGS were to utilize a weekly pricing schedule. Corrections to prices 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 daily basis. The daily basis will utilize postings Monday through Friday with applicable price changes to be effective as of the start of business on the following day. Weekend prices will be based on Friday's posting. The Friday posting will also stay in effect on Monday holidays. Prices in effect for mid-week or Friday holidays will be the same as for the preceding day.

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

- (1) Price increases are limited to changes in the OPIS Posting Location as listed in Attachment 1. 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).

## **2.19. 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.

## **2.20. 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).

**2.21. PREVAILING WAGE RATES – PUBLIC WORKS AND BUILDING SERVICES CONTRACTS**

The work under this Contract 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.

The applicable Prevailing Wage Rate Schedule for this project is **PRC # 2022900866**

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.**

**2.22. 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).

**2.23. MINIMUM ORDER**

The minimum order (delivery) for this Contract is 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 2.27, 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."

<b>Tank Capacity (in gallons)</b>	<b>Amount Delivered</b>	<b>Optional Surcharge</b>
275 or more	Under 150 to 75	\$50.00
	Under 75	\$75.00
<b>Tank Capacity (in gallons)</b>	<b>Amount Delivered</b>	<b>Optional Surcharge</b>
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.

**2.24. PURCHASING CARD ORDERS**

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

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

**2.25. 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 order. The invoice must include detailed line item information to allow Authorized Users to verify that pricing at point of receipt matches the Contract price on the original date of order. At a minimum, the following fields must be included on each invoice:

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

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

**2.26. 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, but the time shall never exceed 24 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, 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 insuring that tanks are accessible to the Contractor. Authorized Users should also make certain that receiving personnel are available at time of delivery. Authorized User is responsible to ensure sufficient tank capacity is available for the minimum required delivery for a Motor Transport order (i.e. 5,500 gallons). Failure of the Authorized User to make appropriate delivery arrangements, including tank capacity for MT, 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.

The Contractor guarantees that the product supplied will meet or exceed the minimum specifications listed in Section 3 – Fuel Specifications.

**2.27. 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 clause 2.23 MINIMUM ORDER). Determination for total gross tank capacity shall include all manifolded tanks. The Contractor shall maintain a record of the estimated consumption of fuel oil, Kerosene, or No. 2, including bio-fuels, 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 insure an adequate supply at all times.

If the Contractor, after having accepted the request from the Authorized User, permits the level of the fuel to fall below the percentages of the total capacity of the Authorized User's tank or tanks indicated in the following table, and does not meet the requirement to deliver on an emergency basis within four (4) hours, the Authorized User shall have the right to purchase sufficient fuel on the open market to fill such tank or tanks and to charge any increase in price paid over the current contract price to the account of the Contractor. The Contractor shall permit the other vendor to supply fuel oil into Contractor-owned tank(s), and shall not hold the Authorized User or the other supplying source liable in any way for said delivery.

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

**2.28. SUPPLIER CERTIFICATE**

Contractor is an established refiner, distributor, or authorized dealer. Through Contractor's submission of a Supplier Certificate from the refiner or distributor, the supplier has guaranteed that Contractor is an authorized dealer or distributor and has agreed to supply the Contractor with all quantities of Products required by the Contractor in fulfillment of its obligations under this Contract. The State reserves the right to request updated

supplier certification at any time during the Contract. Contractor shall use the certificate attached to this Contract to document this level of support (see Attachment 6 – Fuel Supplier Certificate).

If requested by the State, the Supplier Certificate is to be forwarded by the Contractor to its proposed supplier for completion, and returned to the Contractor to be submitted to the State. The Commissioner reserves the right to investigate or make any inquiry into the capabilities of Contractor to properly perform under this Contract.

**2.29. 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.

No. 2 fuel oil tank wagon deliveries shall be delivered by tank wagons used exclusively for transporting No. 2 including bio-fuels.

**2.30. DELIVERY SCHEDULES**

The delivery schedules are based on Authorized Users' requirements submitted to Procurement Services by Requirement Letter RL204, and as subsequently updated and confirmed with Authorized Users as shown in Section 1.1 and Attachments 2 and 3. The delivery schedules are available as a guide to indicate proposed delivery points and estimated annual quantities. The delivery schedules may be revised or clarified as necessary. This information is available to clarify delivery conditions, where possible. Any specific questions regarding the site conditions should be directed to the end-user via any communication available, as shown on the Delivery Schedule. The Delivery Schedules are attachments in this Contract, and any updates, (if any) are available upon direct request to OGS Procurement Services via the e-mail list under the designated contact.

Contractor shall be obligated to deliver under this Contract to any State Agency which places a purchase order under the 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, shall be eligible to receive deliveries and/or be added to the Delivery Schedule at 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 Contractor to notify both the contract user and OGS of any locations not identified on the Delivery Schedule within 30 days after the first delivery. See the "New Accounts" Section of this Contract.

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

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

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

**2.31. 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.

**2.32. UNANTICIPATED EXCESSIVE PURCHASE**

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

**2.33. CONTRACT ADMINISTRATION**

Contractor 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. Contractor shall also provide an Emergency Contact in the event of an emergency occurring outside business hours or on weekends/holidays.

Contractor shall provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Contractor must notify OGS within five Business Days if its Contract Administrator, Emergency Contact, or Customer Service employees change, and provide an interim contact person until the position is filled. Changes shall be submitted electronically via e-mail to the OGS Contract Management Specialist or team-dedicated e-mail.

**2.34. 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 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.

**2.35. 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.

**2.36. ENVIRONMENTAL SUSTAINABILITY 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.

**2.37. 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 Contractor 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.

**2.38. 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.

**2.39. 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.

**2.40. 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.

**2.41. REPORT OF CONTRACT USAGE**

Contractor shall submit Attachment 5 – *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 15<sup>th</sup> for sales July 1<sup>st</sup> through December and due July 15<sup>th</sup> for sales January 1<sup>st</sup> through June 30<sup>th</sup>). If the Contract period begins or ends in a fractional portion of a reporting period, only the actual Contract sales for this fractional period should be included in the *semi-annual* report.

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

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

The report in Attachment 5 – *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.

**2.42. 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.

During the term of this Contract, Authorized Users and Contractor will share responsibility for ensuring and maintaining compliance with any applicable local laws or mandates regarding fuel types.

#### **2.43. 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.

#### **2.44. 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 [http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf) . The ST-220-TD can be found at [http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://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. 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 <http://www.tax.ny.gov/> for additional information.

#### **2.45. CONTRACTOR PERFORMANCE**

Investigate or make any inquiry into the capacity of any Contractor to properly perform during the duration of the contract term.

#### **2.46. SAMPLES**

- A. **Contractor Supplied Samples** - The Commissioner reserves the right to request from the 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 cancellation of the Contract. Samples must be submitted free of charge and be accompanied by the Contractor'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 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 Contractor, at the Contractor's expense and risk. Where the Contractor 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 Contract. 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 Contract, 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, Contractor samples consumed or rendered useless by testing will not be returned to the Contractor. 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.

#### 2.47. 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.

### 3. FUEL SPECIFICATIONS

#### 3.1. 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: Contractor'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 twenty-four (24) 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 through Friday. Saturday/Sunday deliveries are to be made in accordance with Clause 32 of Appendix B – Weekend and Holiday Deliveries.

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 insure compliance by supplier with these specification requirements. Circular Letters (CL) are found on the OGS website under Announcements.

### **3.2. 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.

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

### **3.3. 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.

### **3.4. 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.

### **3.5. 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.)

**3.6. 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.

**3.7. 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).

**3.8. 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.).

**3.9. 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.

**SUMMARY TABLE**

<b>Ash content (%) greater than</b>	<b>Ash content (%) less than</b>	<b>Deduction taken on Total Price</b>
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

**3.10. 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](mailto:OGS.sm.PS_CM_FleetFuelRoads@ogs.ny.gov)

**3.11. WINTER BLEND REQUIREMENTS**

Contractors of No. 2 fuel oil, including Bio-blends, at their option, may provide a winter blend upon agency request. Invoice for winter blend will show separate pricing for No. 2, including bio-blends and kerosene as necessary. The price for No. 2, including bioblends, shall be the contract price and the price for 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 is used to provide

winter protection, the contractor is allowed to charge market price for additive, and as with Kerosene, list price as a separate line item on invoice.

### **3.12. 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 6), 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 D396-06-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

### **3.13. 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), latest revision thereof.

### **3.14. 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), latest revision thereof, or approved equivalent method; or the sum of the results of ASTM D95 (IP #74/84) plus (+) ASTM D473-07 (2012), latest revision thereof, or approved equivalent method, relative to the individual characteristics of the product being tested.

### **3.15. 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 D445-12 (IP #71-84), latest revision thereof, or approved equivalent method, and ASTM D2161-10,

conversion of Kinematic Viscosity to Saybolt Universal Seconds (SUS) or to Saybolt Furol Seconds (SFS), latest revision 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).

**3.16. NITROGEN**

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

**3.17. 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 II 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), latest revision 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.*

**3.18. 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 D482-12 (IP #4/81), latest revisions 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.

**3.19. 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 Table III, 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 D240-09, latest revision".

**GENERAL:**

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

**SUMMARY OF EPA SULFUR CONTENT (REQUIREMENTS)**

Sulfur in Fuel Limitation		
Geographical Area of the State	Residual #4 & #6 and biodiesel Blends B2	Distillate #1 & #2 and biodiesel Blends B2 & B5
Maximum percent sulfur by weight - ASTM - D129-11 or D4294-10 (or legal local limit per EPA requirements when stricter)		
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	No. 4
Gravity, °API Minimum:	D1298-12B	36	35	30	20
Maximum:	D287-12B D4052-11	52	46	38	30

**GROUP 05500 – Fuel Oil, Heating (Grades #2, #4, #6, Kerosene and BioHeating Fuel) (Statewide) – Base Contract**

Flash Point; °F Minimum:		100	100	----	----
Minimum:	D93-12	----	----	120	130
Freeze Point, °F Maximum:	D2386-06	-22°F	----	----	--
Pour Point, °F Maximum :	D97-12	---	-9	21	21
Water & Sediment, %Volume, D1796-11					
Maximum:	D473-07	None	Trace	Trace	0.5
REQUIREMENT	A.S.T.M. TEST NO.	Kerosene (see Note)	No.1	No. 2	No. 4
Viscosity, SUS/100°F	D2161-10				
Maximum:	D445 (IP #71-84)	----	33	38	125
Minimum:		----	----	33	45
Viscosity, Kinematic, (Centistokes @104°F)\	D445-12				
Maximum:		1.9	2.2	3.6	26.4
Minimum:		1.0	1.4	1.8	5.8
Carbon Residue, %Maximum by Weight based on 10% distillate residue:	D189-06 e1	----	0.10	0.35	----
based on Total residue:		----	----	----	9.0
Ash, % maximum by weight:	D482-12	----	0.05	0.05	0.1
Corrosion, Maximum 3 hours @122°F	D130-12	Strip #3	Strip #3	Strip #3	----
Sulfur, wt. % Maximum Or Legal Local Limit Per EPA requirements when stricter	D129-11	0.0015	0.0015	0.0015	1.5
BTU Per Gallon, Minimum (Bomb Calorimeter)	D240-09	131,000	136,000	139,000	143M
Cloud Point, °F Nominal	D5772-10	-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) 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 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 D129-11 or D4294-10	1.00% Max. Sulfur D129-11 or D4294-10	0.50% Max. Sulfur D129-11 or D4294-10	0.30% Max. Sulfur D129-11 or D4294-10
Gravity (60°F) D287-12b	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° D93-12	Min. 140	Min. 140	Min. 140	Min. 140
Viscosity at 122°F D2161-10	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 (D95-05(2010):		Water Content shall not exceed 1.0%;		
Sediment by Extraction (D473-07(2012)):		Sediment content shall not exceed 0.5%;		
Total Water & Sediment: (D95-05(2010) + (D473-07(2012) or D1796-11)		W & S combined content shall not exceed 1.5%.		
Ash (% by weight) D482-12	Max. 0.100	Max. 0.100	Max. 0.100	Max. 0.100
Carbon Residue, % Weight based on Total residue: D189-06(2010)e1 regardless of sulfur content	17% max.			
BTU per gallon D240-09	Min. 149,000	Min. 147,000	Min. 144,000	Min. 143,000

**3.20. BIODIESEL USAGE CONSIDERATIONS**

There are many positive benefits attributed to the use of B2 and B5 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 on 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 B2 and B5 biodiesel blends should be used within six months of manufacture. Fuels determined to have a Total Acid Number (by ASTM D664-11a) of greater than 0.80 KOH/g are not recommended for use.

OEM Considerations: BEFORE deciding to use B2 and B5 fuel, 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>

**3.21. FINISHED FUEL REQUIREMENTS FOR B2 AND B5 BIODIESEL**

**MATERIAL:** The finished B2 and B5 biodiesel blends shall be prepared using the following feedstock:

#2 Fuel: As described above and meeting the requirements of ASTM D396-12 (Fuel Oil) and those listed in Table I of this spec.

**WORKMANSHIP:**

The finished B2 or B5 biodiesel blend 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 D4176-4 (2009), procedure 1 or 2.

**PHYSICAL AND CHEMICAL REQUIREMENTS:**

The biodiesel portion of the finished B2 or B5 biodiesel blends shall be 2% or 5% by volume of B100 biodiesel with a tolerance of +/-1%. Remaining 98% or 95% of the final blend shall be composed of #2 fuel. Final blended product shall meet the requirements listed in Table III below.

TABLE III:

PARAMETER	TEST METHOD	REQUIREMENTS	
		B2	B5

Gravity, °API Minimum: Maximum:	Any of the following: D1298-12b D287-12b D4052-11	29.8 37.7	29.8 37.7
Flash Point, °F Minimum:	D93-12	120	120
Pour Point, °F Maximum:	D97-12	21	21
Water & Sediment, % Volume, Maximum:	D1796-11 or D95-05(2010 & D473-07	Trace	Trace
Viscosity, SUS/100° F Minimum: Maximum:	D445-12 D2161-10	33 38	33 38
Carbon Residue, % Max. (w/w) based on 10% distillate residue	D189-06(2010)e1	0.35	0.35
Ash, % Max. (w/w):	D482-12	0.05	0.05
Corrosion, Maximum 3 Hours @ 122° F	D130-12	3	3
Sulfur, % Maximum (w/w): NOTE: Legal local limit to prevail per EPA requirements when stricter	D129-11	0.5	0.5
BTU per Gallon, Minimum:	D240-09	138,000	138,000
Cloud Point, ° F, Nominal: See note on page 50	D2500-11	40	40

## **4. GENERAL PROVISIONS**

### **4.1. NOTICES**

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this Contract shall be in writing and shall be validly given when mailed by registered or certified mail, e-mailed, or hand delivered, (i) if to the State, addressed to the State at its address set forth below, and (ii) if to Contractor, addressed to Contract Administrator at the address set forth below.

The parties may, from time to time, specify any address in the United States as its address for purpose of notices under this Contract by giving fifteen (15) days written notice to the other party. The Parties agree to mutually designate individuals as their respective representatives for purposes of this Contract. Contact information for the designated individuals will be set forth on the Contract Award Notification (CAN) and on the Contractor Information page for this Contract, which will be posted on the OGS website.

All notices sent shall be effective upon actual receipt by the receiving party. The Contractor will be required to forward a copy of the official notice to any Authorized User that is associated with the subject of the notice.

Written notice of any alleged breach by one party to the other shall provide specific facts, circumstances and grounds upon which the breach is being declared.

### **4.2. CAPTIONS**

The captions contained in this Contract are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

### **4.3. SEVERABILITY**

If any provision of this Contract is deemed invalid or unenforceable, such determination shall have no effect on the balance of the Contract, which shall be enforced and interpreted as if such provision was never included in the Contract.

### **4.4. COUNTERPARTS**

This Contract may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same Contract. Any signature page of any such counterpart may be

attached or appended to any counterpart to complete a fully executed counterpart of this Contract, and shall bind such party.

**4.5. ENTIRE AGREEMENT**

This Contract and the referenced Appendices and Attachments constitute the entire agreement between the parties thereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and the Contract shall not be changed, modified or altered in any manner except by an instrument in writing executed by the State and the Contractor, with all necessary approvals. Authorized Users shall not have the authority to modify the terms of the Contract, except as to better terms and pricing for a particular procurement than those set forth herein. In accordance with the terms set forth in Appendix B, Section 26, *Modification of Contract Terms*, and Section 30, *Purchase Orders*, no alteration or modification shall be made by including terms or conditions on a Purchase Order, order form or other document which seek to vary the terms of this Contract or impose new duties or obligations on the Contractor or Authorized User, and no such terms shall have any force and effect.

**CONTRACT SIGNATURE PAGE**

**IN WITNESS WHEREOF**, the parties therefore hereby execute their mutual agreement to the terms of this Contract. This agreement shall be executed and shall be a binding Contract between the parties effective on the date of OSC approval. The State further warrants that, where Contractor is asked to execute multiple original copies of this signature page along with a complete original copy of the Contract, the approved signature page(s) will be affixed by the State, upon receipt of all necessary approvals, to additional copies of this Contract which conform exactly to the complete original copy as submitted by Contractor and executed simultaneously therewith.

**CONTRACTOR**

Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Company Name: \_\_\_\_\_  
Federal ID: \_\_\_\_\_  
NYS Vendor ID: \_\_\_\_\_  
Date: \_\_\_\_\_

**THE PEOPLE OF THE STATE OF NEW YORK**

Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**NEW YORK STATE OFFICE OF THE STATE COMPTROLLER:**



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