



Office of General Services
Procurement Services

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AGREEMENT FOR
FUEL OIL, HEATING (GRADE #2, KEROSENE AND BIOHEATING
FUEL) (STATEWIDE)

BY AND BETWEEN

NEW YORK STATE

OFFICE OF GENERAL SERVICES

AND



CONTRACT NUMBER PC 

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

THIS AGREEMENT (hereinafter the “Contract” or the “Agreement”) is made this ____ day of _____, 2025, 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 36th Floor, Corning Tower, Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242 (hereinafter referred to as the “State” or “OGS”) and [REDACTED], having its principal place of business at [REDACTED] (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, 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, Kerosene and Bioheating Fuel) at the lowest cost, referred to as IFB #23417 (hereinafter the “IFB” or the “Solicitation”), which was advertised on July 18, 2025 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, e.g., Heating (Grades #2, Kerosene, and Biodiesel) by bulk delivery to Authorized Users' storage facility for use by Authorized Users. The product shall be Contractor furnished, delivered and unloaded as specified herein.

All products provided under this Contract shall be homogenous fuel oil, Kerosene, or biodiesel blends suitable for burner appliances, and they shall conform to the requirements of ASTM D396 (Fuel Oil), ASTM D3699 (Kerosene), ASTM D6751 (biodiesel), or latest revision(s) thereof, or approved equivalent method, except as listed differently elsewhere herein.

This Contract is based on the fuel oil (heating) requirements submitted to OGS by Authorized Users in various counties. The specific users, counties and tanks are listed in the Delivery Schedules. See Attachments 10, *Delivery Schedule – State Agencies*, and Attachment 11, *Delivery Schedule - Non-State Agencies*.

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:

Item Number	County	Fuel Type	OPIS Posting Location
1	Albany	2-TW B10	Albany
2	Albany	2-TW B20	Albany
3	Albany	2-MT B10	Albany
4	Albany	2-MT B20	Albany
5	Albany	KERO (Heating)	Albany
6	Bronx	2-MT B10	Long Island
7	Broome	2-TW B10	Syracuse
8	Broome	2-MT B10	Syracuse
9	Broome	KERO (Heating)	Syracuse
10	Cayuga	2-TW B10	Syracuse
11	Cayuga	2-TW B20	Syracuse
12	Cayuga	KERO (Heating)	Syracuse
13	Chemung	2-TW B10	Syracuse
14	Chemung	2-MT B10	Syracuse
15	Chemung	KERO (Heating)	Syracuse
16	Chenango	2-TW B10	Utica
17	Clinton	2-TW B10	Albany
18	Clinton	2-TW B20	Albany
19	Clinton	2-MT B10	Albany

20	Clinton	2-MT B20	Albany
21	Clinton	KERO (Heating)	Albany
22	Columbia	2-TW B10	Newburgh
23	Columbia	2-TW B20	Newburgh
24	Columbia	2-MT B10	Newburgh
25	Columbia	2-MT B20	Newburgh
26	Columbia	KERO (Heating)	Newburgh
27	Cortland	2-TW B10	Syracuse
28	Delaware	2-TW B10	Albany
29	Delaware	2-TW B20	Albany
30	Delaware	2-MT B10	Albany
31	Delaware	2-MT B20	Albany
32	Delaware	KERO (Heating)	Albany
33	Dutchess	2-TW B10	Newburgh
34	Dutchess	2-MT B10	Newburgh
35	Dutchess	2-MT B20	Newburgh
36	Erie	2-TW B10	Syracuse
37	Erie	2-MT B10	Syracuse
38	Essex	2-TW B10	Albany
39	Essex	2-MT B10	Albany
40	Essex	KERO (Heating)	Albany
41	Franklin	2-TW B10	Albany
42	Franklin	2-MT B10	Albany
43	Franklin	2-MT B20	Albany
44	Franklin	KERO (Heating)	Albany
45	Fulton	2-TW B10	Utica
46	Greene	2-TW B10	Newburgh
47	Greene	2-TW B20	Newburgh
48	Greene	2-MT B10	Newburgh
49	Greene	KERO (Heating)	Newburgh
50	Hamilton	2-TW B10	Utica
51	Hamilton	2-MT B10	Utica
52	Herkimer	2-TW B10	Utica

53	Herkimer	2-TW B20	Utica
54	Herkimer	2-MT B20	Utica
55	Herkimer	KERO (Heating)	Utica
56	Jefferson	2-TW B10	Utica
57	Jefferson	2-TW B20	Utica
58	Jefferson	2-MT B10	Utica
59	Jefferson	2-MT B20	Utica
60	Jefferson	KERO (Heating)	Utica
61	Kings	2-TW B10	Long Island
62	Kings	2-MT B10	Long Island
63	Kings	KERO (Heating)	Long Island
64	Lewis	2-TW B10	Utica
65	Livingston	2-TW B10	Syracuse
66	Madison	2-TW B10	Utica
67	Madison	KERO (Heating)	Utica
68	Monroe	2-TW B10	Syracuse
69	Monroe	2-MT B10	Syracuse
70	Montgomery	2-TW B10	Utica
71	Montgomery	2-TW B20	Utica
72	Montgomery	KERO (Heating)	Utica
73	Nassau	2-TW B10	Long Island
74	Nassau	2-TW B20	Long Island
75	Nassau	2-MT B10	Long Island
76	Nassau	2-MT B20	Long Island
77	New York	2-MT B10	Long Island
78	Niagara	2-TW B10	Syracuse -No Award
79	Oneida	2-TW B10	Utica
80	Oneida	2-TW B20	Utica
81	Oneida	2-MT B10	Utica
82	Oneida	KERO (Heating)	Utica
83	Onondaga	2-TW B10	Utica
84	Orange	2-TW B10	Newburgh
85	Orange	2-TW B20	Newburgh

86	Orange	2-MT B10	Newburgh
87	Orange	KERO (Heating)	Newburgh
88	Orleans	2-TW B10	Syracuse
89	Orleans	KERO (Heating)	Syracuse
90	Oswego	2-TW B10	Utica
91	Oswego	KERO (Heating)	Utica
92	Otsego	2-TW B10	Albany
93	Otsego	2-MT B10	Albany
94	Otsego	KERO (Heating)	Albany
95	Putnam	2-TW B10	Newburgh
96	Putnam	2-MT B10	Newburgh
97	Putnam	2-MT B20	Newburgh
98	Queens	2-TW B10	Long Island
99	Queens	2-MT B10	Long Island
100	Rensselaer	2-TW B10	Albany
101	Rensselaer	2-TW B20	Albany
102	Rensselaer	KERO (Heating)	Albany
103	Richmond	2-TW B10	Long Island
104	Richmond	2-MT B10	Long Island
105	Rockland	2-TW B10	Newburgh
106	Rockland	2-TW B20	Newburgh
107	Rockland	2-MT B10	Newburgh
108	Rockland	2-MT B20	Newburgh
109	Saratoga	2-TW B10	Albany
110	Saratoga	2-TW B20	Albany
111	Saratoga	2-MT B10	Albany
112	Saratoga	2-MT B20	Albany
113	Saratoga	KERO (Heating)	Albany
114	Schenectady	2-TW B10	Albany
115	Schenectady	2-TW B20	Albany
116	Schenectady	2-MT B20	Albany
117	Schenectady	KERO (Heating)	Albany
118	Schoharie	2-TW B10	Albany

119	Schoharie	2-MT B10	Albany
120	Schoharie	KERO (Heating)	Albany
121	Seneca	2-TW B10	Syracuse
122	Seneca	2-TW B20	Syracuse
123	Seneca	2-MT B20	Syracuse
124	Seneca	KERO (Heating)	Syracuse
125	Steuben	2-TW B10	Syracuse
126	St Lawrence	2-TW B10	Albany
127	St Lawrence	2-MT B10	Albany
128	St Lawrence	2-MT B20	Albany
129	St Lawrence	KERO (Heating)	Albany
130	Suffolk	2-TW B10	Long Island
131	Suffolk	2-TW B20	Long Island
132	Suffolk	2-MT B10	Long Island
133	Suffolk	2-MT B20	Long Island
134	Sullivan	2-TW B10	Newburgh
135	Sullivan	2-MT B10	Newburgh
136	Sullivan	KERO (Heating)	Newburgh
137	Tioga	2-MT B10	Syracuse
138	Tompkins	2-TW B10	Syracuse
139	Ulster	2-TW B10	Newburgh
140	Ulster	2-TW B20	Newburgh
141	Ulster	2-MT B10	Newburgh
142	Ulster	KERO (Heating)	Newburgh
143	Warren	2-TW B10	Albany
144	Warren	2-TW B20	Albany
145	Warren	2-MT B10	Albany
146	Warren	KERO (Heating)	Albany
147	Washington	2-TW B10	Albany
148	Washington	2-TW B20	Albany
149	Washington	2-MT B10	Albany
150	Washington	KERO (Heating)	Albany
151	Wayne	KERO (Heating)	Syracuse
152	Westchester	2-TW B10	Long Island
153	Westchester	2-TW B20	Long Island
154	Westchester	2-MT B10	Long Island

155	Westchester	2-MT B20	Long Island
156	Westchester	KERO (Heating)	Long Island
157	Yates	2-TW B10	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. The Contractor must furnish all quantities actually ordered at or below the Contract prices. The individual value of each resultant Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered. Authorized Users will be encouraged to purchase from Contractors who offer the Products and pricing that best meet their needs in the most practical and economical manner. See Appendix B *Estimated/Specific Quantity Contracts and Participation in Centralized Contracts*.

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:

- a. 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.
- b. The individual value of this Contract is indeterminate and will depend upon actual Authorized User demand and actual quantities ordered during the Contract period.
- c. The State reserves the right to terminate any Contract for cause or convenience prior to the end of the term pursuant to the terms and conditions of the Contract. Appendix B, Section 43 (Termination) subparagraph (b) (For Convenience)
- d. Contract pricing that is lower than anticipated could result in a higher quantity of purchases by Authorized Users than anticipated.
- e. Contract pricing that is higher than anticipated could result in a lower quantity of purchases by Authorized Users than anticipated.

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

1.3 NYS Comptroller Approval

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

1.4 Definitions

Capitalized terms used in this Contract shall be defined in accordance with Appendix B *Definitions*, or as set forth below.

“**ASTM**” shall refer to a designation for ASTM International, formerly known as American Society for Testing and Materials. All ASTM references in the specifications are understood to refer to the most recent edition of that specification/standard.

“**Bioblend**” is a mixture of Biodiesel with #2 fuel oil.

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

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

“**Delivery**” shall be the act of transporting a specified product to an identified person or place. Refer to Section 3.15, *Product Delivery* of this document.

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

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

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

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

“**MT**” shall refer to Delivery by Motor Transport. Motor Transport shall refer to the transportation vessel used to deliver fuel provided for in the resulting Contract(s) of more than 5,500 gallons, to the Authorized User, at one time into one or more storage tanks at one location (one delivery ID from the Delivery Schedule),

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

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

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

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

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

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

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

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

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

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

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

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

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

“**TW**” shall refer to Delivery by Tank Wagon. Tank Wagon shall refer to the transportation vessel used to deliver fuel provided for in the resulting Contract(s) of less than 5,500 gallons, to Authorized Users.

1.5 Appendices and Attachments

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

APPENDICES

Appendix A – *Standard Clauses for NYS Contracts* (June 2023)

Appendix B – *General Specifications* (April 2016)

Appendix C – *Federal Funding Agency Mandatory Terms and Conditions* (October 2023)

ATTACHMENTS

Attachment 1 – *Pricing*

Attachment 4 – *Insurance Requirements*

Attachment 8 – *Report of Contract Usage*

Attachment 10 – *Delivery Schedule – State Agencies*

Attachment 11 – *Delivery Schedule – Non-State Agencies*

1.6 Conflict of Terms

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

1. Appendix A – *Standard Clauses for New York State Contracts*;
2. Appendix C – *Federal Funding Agency Mandatory Terms and Conditions*;
3. This Document;

4. Appendix B – *General Specifications*;
5. All other appendices and attachments to the Solicitation

2. SPECIFICATIONS

2.1 Product Requirements

The Contractor guarantees that the Product provided will meet or exceed the minimum specifications listed in this section.

SUMMARY OF EPA SULFUR CONTENT (REQUIREMENTS)

Sulfur in Fuel Limitation

Maximum percent sulfur by weight - ASTM - D4294 or latest revision(s) thereof (or legal local limit per EPA requirements when stricter)

Geographical Area of the State	Distillate #1 & #2 and Biodiesel Blends B10, & B20
--------------------------------	--

New York City	0.0015
Nassau, Rockland, and Westchester Co.	0.0015
Suffolk County: Towns of Babylon, Brookhaven, Huntington, Islip and Smith Town	0.0015
Erie and Niagara Counties	0.0015
Remainder of State	0.0015

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

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

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

TABLE I

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

Pour Point, °F Maximum :	D97	----	-9	21
Water & Sediment, %Volume, D1796 Maximum:	D473	None	Trace	Trace
Viscosity, SUS/100°F Maximum:	D2161 D445 (IP #71-84)	----	33	38
Minimum:		----	----	33
Viscosity, Kinematic, Maximum: (Centistokes @104°F)\	D445	1.9	2.2	3.6
Minimum:		1.0	1.4	1.8
Carbon Residue, %Maximum by Weight based on 10% distillate residue: based on Total residue:	D189	----	0.10	0.35
		----	----	----
Ash, % maximum by weight:	D482	----	0.05	0.05
Corrosion, Maximum 3 hours @122°F	D130	Strip #3	Strip #3	Strip #3
Sulfur, wt. % Maximum Or Legal Local Limit Per EPA requirements when stricter	D4294	0.0015	0.0015	0.0015
BTU Per Gallon, Minimum (Bomb Calorimeter)	D240	131,000	136,000	139,000
Cloud Point, °F Nominal	D5772	-35	-35	40

NOTES ON CLOUD POINT REQUIREMENTS:

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

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

- a. Maximum flame drop: 5mm (0.197”);
- b. Maximum change - flame width: 6mm (0.236”);
- c. No mushroom development;
- d. Only slight white deposit permissible on globes;
- e. Tensile strength of wick fibre shall be uninjured;
- f. Maximum char: 1/4”;
- g. Steady, free-burning without undue sensitivity to drafts;
- h. Flame shall hold its shape for duration of test; and
- i. Rate of Burning, after 1st weighing, shall be 18 thru 26 grams per hour.

2.2 Local Laws and/or Mandates

The State makes no guarantee that the filed requirements submitted by Authorized Users are in compliance with any applicable local laws or mandates regarding fuel types, such as the New York City Biodiesel Mandate.

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.

2.3 Fill and Vent Requirements

Authorized Users must ensure that fill and vent equipment adequately meet NYS Standards. Contractor has the responsibility of reporting faulty equipment to the end users and the appropriate NYS regulatory agencies. Contractor's delivery trucks **MUST BE EQUIPPED WITH METERS**, except for 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 able to make bulk deliveries within forty-eight (48) hours after receipt of order.

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

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

Authorized Users are responsible for making certain that the Delivery site is made ready for proper Delivery by the Contractor. Failure of the Authorized User to make appropriate arrangements preventing 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 for that particular trip. Authorized Users should also make certain that receiving personnel are available at time of Delivery.

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

2.4 Topping Off Tanks

Authorized User requests to top-off tanks for testing purposes must be honored as described elsewhere herein. The requesting Authorized User 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 Authorized User within 48 hours.

2.5 Non-Complying Product – Delivery

Deliveries of fuel oil may be sampled at the Contractor's loading point or at the point of Delivery by a representative of the purchasing Authorized User'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 Authorized User 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 the tank(s) affected.

2.6 Non-Complying Product – Delivery Deduction

Deductions shown hereafter will be made from the invoice price, or subsequent Authorized User invoices, when fuel oil is delivered that does not comply with the detailed specifications. These deductions are applicable whether or not the fuel oil in question has been consumed by the purchasing Authorized User. 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.

2.7 Non-Complying Product – Flash Point – Price Deduction

If it is discovered that the flash point of the delivered fuel oil is less than the required minimum, but not more than six (6) degrees Fahrenheit below that minimum, the contracted price will be reduced by one-half (0.5%) percent for each degree Fahrenheit below the limit.

Additionally, the contracted price will be deducted at the rate of one percent (1.0%) for every two degrees Fahrenheit that the delivered fuel oil's flash point falls below the specified limit, which is more than six degrees Fahrenheit below the minimum requirement. Ten degrees below the specified limit, for example, results in a 1.5% deduction for the first six degrees Fahrenheit, a 2% deduction for the next four degrees, and a 3.5% deduction overall.

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

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

2.9 Non-Complying Product – Viscosity – Price Deduction

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

2.10 Non-Complying Product – Sulfur Content – Price Deduction

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

2.11 Non-Complying Product – Ash Content – Price Deduction

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

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

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

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

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

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

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

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

The respective grade of fuel oil provided under this 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

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

2.13 Winter Blend Requirements

Contractors of Bioblends, at their option, may provide a winter blend upon Authorized User request. Invoice for winter blend will show separate pricing for Bioblends and Kerosene as necessary. The price for Bioblends, shall be the Contract price and the price for Kerosene but the Kerosene shall be no greater than the Contractor's prevailing price for Kerosene (or, if applicable, Contractor's awarded price for Kerosene). Authorized User(s) 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, Authorized Users(s) shall follow purchasing guidelines to purchase winter blend in the open market. If additives rather than Kerosene are used to provide winter protection, the Contractor is allowed to charge market price for additives, and as with Kerosene, list price as a separate line item on invoice, with agreement between the Authorized User and the Contractor.

2.14 Environment Reporting Requirements

Certain customers using the State fuel oil contract must provide reports regarding the emissions from their fuel oil heating plants. At the customers' request, the Contractor will be required to provide written documentation for each Delivery to prove that the fuel delivered is in compliance with EPA standards in effect for the type of fuel delivered to the customer under the State fuel oil contract. OGS Procurement Services has provided a fuel Supplier Certificate (see Section 3.2), which can be used for this purpose. Contractors can use another form of reporting (such as Bill of Lading/Delivery Ticket) providing the following information is included:

FOR DISTILLATE OIL:

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

2.15 Flash Point

Contract **PCXXXXX**

The specified minimum flash point for Fuel Oils provided under this Contract shall be as specified in Table I, elsewhere herein, for the respective fuel oil being provided. Delivered Product having a flash point below that specified in Table I, 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 Authorized User's tank and replaced with Product conforming to specifications. The Flash Point shall be determined using ASTM Test Method D93 (IP #34/85) or latest revision thereof.

2.16 Water and Sediment

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

2.17 Viscosity

The specified maximum Viscosity for Fuel Oils provided under this Contract shall be as specified in Table I, found in Section 2.1, *Product Requirements*. 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 specification shall be removed from the purchasing Authorized User's tank and replaced with Product conforming to specifications, at purchasing Authorized User's discretion based on excessive filter maintenance and/or poor burner performance. The Viscosity shall be determined using - ASTM Test Method D445 (IP #71-84) or latest revision thereof, or an approved equivalent method, and ASTM D2161, conversion of Kinematic Viscosity (cSt) to Saybolt Universal Seconds (SUS) or to Saybolt Furol Seconds (SFS) or latest revision(s) thereof, or an approved equivalent method, - relative to the individual characteristics of the Product being tested.

After receiving a written request from the Authorized User, the Contractor's delivery ticket will state the fuel's viscosity (cSt, SUS, SFS).

2.18 Nitrogen

After receiving a written request by the purchasing Authorized User, the Contractor's delivery ticket will state the nitrogen content.

2.19 Sulfur

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

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

All No. 2 fuel oil for the purpose of this 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 (2) 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.

2.20 ASH Content

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

2.21 BTU per Gallon Content

The specified minimum BTU PER GALLON content for fuel oils provided under this Contract shall be as specified in Table I, and elsewhere herein. Delivered Product having a BTU PER GALLON content less than the specified percent shall be adjusted in price as specified elsewhere herein for NON-COMPLYING

PRODUCT: "Btu content shall be determined using ASTM D240 or latest revision".

GENERAL: Fuel oils furnished shall conform to the physical and chemical requirements as listed under Table I, and to the sulfur in fuel limitations listed in the Environmental Protection Agency (EPA) requirement summary in Section 2.1, *Product Requirements*:

2.22 Biodiesel Usage Considerations

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

Fuel Filters: Fuel filters on the system should be checked frequently upon initial Biodiesel blend use and changed as necessary. Biodiesel blends have excellent solvent properties and may affect cellulosic filters due to solubility

of resin and binders used in those filters. Glass fiber-based filters manufactured without the use of binders are probably not affected.

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

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

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

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

OEM Considerations: BEFORE deciding to use Biodiesel, prospective users should make sure they have checked with the manufacturers of their equipment for considerations and concerns related to that usage. FURTHER INFORMATION: Additional information regarding Biodiesel can also be obtained from Clean Fuels Alliance America at (800) 841-5849 or at their website at: [Frequently Asked Questions About Clean Fuels - Clean Fuels Alliance America](#)

2.23 Finished Fuel Requirements for Biodiesel

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

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

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

WORKMANSHIP:

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

PHYSICAL AND CHEMICAL REQUIREMENTS:

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

3. CONTRACT TERMS AND CONDITIONS

3.1 Performance and Bid Bonds

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

3.2 Supplier Certificate

Contractor is an established refiner, distributor, or authorized dealer. Through Contractor's submission of 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.

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.

3.3 Investigation

New York state reserves the right, in its sole discretion, to investigate or make any inquiry into the capacity of Contractor to properly perform under this Contract.

3.4 Contract Term and Extensions

The Contract shall be in effect for a term of up to two (2) years. The Contract term shall commence after all necessary approvals and shall become effective October 3, 2025, or upon the date of OSC approval of the final executed documents, whichever is later, and the Contract term shall end on October 2, 2027, or Two (2) years from the date of OSC approval, whichever is later.

All OGS Centralized Contracts resulting from Solicitation 23417 shall have a co-terminus end date notwithstanding non-renewals or Contract cancelations. At the State's option, the Contract may be extended for three (3) additional years, in increments as deemed to be in the best interest of the State. Whether the optional extensions are exercised is at the sole discretion of the State. A Contractor shall retain the right to decline a Contract extension offered under this section. Any Contract extension will be under the same terms and conditions, subject to the approval of OSC and any additional applicable statutory and policy requirements. Any extensions provided under this section shall apply in addition to any rights set forth in Appendix B *Contract Term – Extension*.

The Contract term provided for in this section shall extend 6 months beyond its termination date only for Authorized Users whose contracts must be registered with the Office of the New York City Comptroller. During the 6-month period the definition of Authorized User shall be deemed to refer only to Authorized Users whose contracts must be registered with the Office of the New York City Comptroller. This extension is in addition to any other extensions available under the Contract. The extension provided for in this paragraph shall be upon the then-existing terms and conditions; provided, however, during such extension an Authorized User, as defined in this paragraph, may agree to amend such terms and conditions solely to comply with changes in statutory requirements (e.g. changes in minimum, prevailing or living wages, or regulated services).

3.5 Short term Extension

This section shall apply in addition to any rights set forth in Appendix B *Contract Term – Extension*. In the event that OGS determines that a short term extension is in the best interests of the State, (e.g., a replacement Contract has not been issued, or an extended period is needed for Authorized Users to transition to another procurement method), any Contract let and awarded hereunder by the State may be extended unilaterally by the State for an additional period of up to 90 calendar days upon notice to the Contractor with the same terms and conditions as the original Contract and any previously approved modifications. With the concurrence of the Contractor, the extension may be for a period of up to 6 months in lieu of 90 calendar days. However, unless otherwise noted in the extension notification or agreement, this extension automatically terminates should a replacement Contract be issued in the interim.

3.6 Price

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

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

Pricing shall reflect the day of Delivery for orders placed by the Authorized User that go beyond the guaranteed Delivery timeframe of 48 (forty-eight) hours. For example, the Authorized User orders 500 gallons of fuel oil on Wednesday, and requests that the Delivery be made on the following Tuesday.

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

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

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

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

Contract prices shall be firm except that price revisions will be permitted in accordance with Section 3.8, *Price Adjustment/Revisions* set forth in this Contract and with respect to certain taxes and duties as follows:

1. "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.

2. “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.
3. The Contract price shall include all applicable Federal, State, Local taxes and duties as stated in Appendix B Section 8 “Taxes” included with this Contract.
4. The State of New York and its political subdivisions are exempt from New York State and local sales taxes and federal excise taxes.
5. The price for fuel oil under this Contract to be awarded hereunder shall be increased by the amount of any after-imposed tax, unless the legislative, judicial or administrative act says otherwise, if the Contractor states in writing that such Contract price does not include any contingency for such after-imposed tax. Such increase shall be prospective only and becomes effective upon such written notice and on the effective date of the next schedule price revision.
6. The price for fuel oil under this Contract to be awarded hereunder shall be decreased by the amount of any after-relieved tax. Such decrease shall be effective when realized or by no later than the next scheduled price revision.
7. 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.

3.7 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 Biodiesel and No. 2 oil, and Kerosene, a fixed OPIS Posting Location has been established for each county. The fixed OPIS Posting Locations are set forth in the tables below and in Attachment 1 – Pricing. Prices posted are rack prices.

For biodiesel and No. 2 oil

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

			Seneca	
			Steuben	
			Tioga	
			Tompkins	
			Wayne	
			Wyoming	
			Yates	

For Kerosene

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

*For Kerosene, the Posting Location will be Newark

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 3.7.2 *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.

3.7.1 Location Change or Substitution

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

3.7.2 Calculation Change or Substitution

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

3.7.3 Product Change or Substitution

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

3.8 Price Adjustment/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. The 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 February 27, 2025, 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 and any resulting Contract refers to the actual day the prices are posted.

Should postings become unavailable or differ from current descriptions and/or format, a posting determined, by the Commissioner, in his or her sole discretions, to be most reflective of market conditions will be used. Corrections to prices in the OPIS Oil Price Daily will be considered only when caused by a typographical or clerical error on the part of said service provider.

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

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

- (1) Price increases are limited to changes in the OPIS Posting Location as listed in Section 3.7 – *OPIS Posting Locations*. Increases in Contract costs or prices to compensate for other increases in the cost of doing business, regardless of the cause or nature of such costs of the Contractor, will not be allowed during the Contract period.
- (2) Price adjustments will continue using the same method if the Contract is extended or renewed.

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

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

3.9 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.

3.10 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 ten (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 Contract price accordingly (see OPIS Posting Location examples).

3.11 NYS DOL Prevailing Wage Rates – Public Works and Building Services Contracts

The work performed under the Contract may be 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, *OGS General Specifications*.

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, rejection of a Contractor's response to an Authorized User, or suspension or termination of Contract.

IMPORTANT NOTE: Authorized Users MUST obtain a separate PRC # for each project from This Award where prevailing wage rates apply. The requested PRC number MUST be noted on all Purchase Orders issued for purchases from this Contract.

For access to the Department of Labor (DOL) Prevailing Wage Schedule, use the following link:

[NYS DOL - Prevailing Wage](#)

For Prevailing Wage Updates, use the following DOL link:

[NYS DOL - Prevailing Wage](#)

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

The following also applies to this Contract.

- A. **Living Wage.** An Authorized User subject to a local law establishing a "living wage," such as Section 6-109 of the New York City Administrative Code, is required to ensure the Contractor sought to be hired complies

with such local law. If the pay rate(s) for a job title(s) is less than the local law “living wage,” then the Authorized User subject to such local law cannot use this Contract for such job title(s). Local laws, however, are not a term and condition of the OGS contract.

3.12 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).

3.12.1 Purchasing Card Orders

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

Contractor shall indicate if they will accept the New York State Procurement Card. For all purchases executed using a New York State Procurement Card, Contractor shall provide an itemized receipt with each delivery.

3.13 Minimum Order

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

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

Determination for total gross tank capacity shall include all manifolded tanks. All locations granted a request from the Contractor for “automatic replenishment” per Section 3.17, shall be exempt from minimum order requirements, including other factors out of the control of Authorized Users (e.g., short filling, mechanical issues, inadequate fuel supply). In no case shall a surcharge be applied to a location while on “automatic replenishment.”

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

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

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

3.14 Invoicing and Payment

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

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

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

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

3.15 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 forty-eight (48) hours. In State declared emergencies, fuel must be delivered within eight (8) to twelve (12) hours of notification. Should there be an after-hours or weekend emergency, or should Authorized User 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 Authorized User.

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

Contract **PCXXXXX**

considered to be Monday thru Friday (8:00 am - 5:00 pm). Saturday/Sunday Deliveries are not standard and are to be made on an emergency basis (and not a regular basis) ONLY, unless mutually agreed upon between the Contractor and Authorized User, or if a run out is imminent before the next normal Delivery day. Delivery of heating oil should give first priority to “Human Needs Customers”.

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

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

3.16 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 **MT** or more tanks from one fixed location of the Delivery vehicle. All such Deliveries shall first be recorded directly into the transporting vehicle.

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

3.17 Automatic Replenishment

Requests for automatic replenishment are preferred in WRITING from an Authorized User but may be required by the Contractor. A Contractor shall provide written notification back to any Authorized User’s request for automatic replenishment on any tank with a total gross capacity equal to or greater than 375 gallons. Automatic replenishment for tank capacities less than 375 gallons will be at the Contractor’s option and may be subject to a minimum order charge (see Section 3.13, *Minimum Order*). Determination for total gross tank capacity shall include all manifolded tanks. The Contractor shall maintain a record of the estimated consumption of Biodiesel and Kerosene, as the case may be using the “degree day” or equivalent method and shall replenish the Authorized User’s tank or tanks without further notice from the Authorized User, whenever necessary to ensure an adequate supply at all times. A “degree day” compares the mean (the average of the high and low) outdoor temperatures recorded for a location to a standard temperature, usually 65° Fahrenheit (F) in the United States.

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

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

3.18 Delivery Schedules

The Delivery schedules are based on Authorized Users' requirements submitted to Procurement Services by Requirement Letter RL226, and as subsequently updated and confirmed with Authorized Users as shown in Section 1.2 and Attachments 10 and 11. The Delivery schedules are available as a guide to indicate proposed Delivery points and estimated annual quantities. Any specific questions regarding the site conditions should be directed to the end-user via any communication available, as shown on the Delivery Schedules. The Delivery Schedules are attachments in this Contract, and any updates, (if any) are available on the OGS website.

Contractor shall be obligated to Deliver under this Contract to any State Agency which places a Purchase Order under this Contract, whether or not such Delivery location is identified in the Delivery Schedules. Any political subdivision or other non-State entity which has not filed a requirement with OGS as of the date of the Solicitation's Bid, shall be eligible to receive Deliveries and/or be added to the Delivery Schedule at a Contractor's option. This being done upon placement of a valid Purchase Order (or other ordering mechanism between the Contractor and the ordering entity) to the Contractor's address as indicated in the award. The Contractor must notify OGS of any new business created from a political subdivision or non-State entity's 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 Authorized User and OGS of any locations not identified on the Delivery Schedules within thirty (30) days after the first Delivery. See Section 3.38, *New Accounts* of this Contract.

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

Filed requirements and Delivery Schedules may be updated by OGS for any mutually agreed upon extension.

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

3.19 Fuels #2 B10, and #2 B20

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

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

EXAMPLE

- Convert Soybean Oil price from lbs. to gallons using the multiplier of 7.6465 (using the simple average of the high and low asking price of soybean oil (region Illinois) found in the immediately preceding published Friday USDA AMS 3511 report Calculate 10% / 20% of converted weekly Soybean Oil price per gallon
- Calculate 90% / 80% of the No. 2 fuel oil average Posted Price specific to fuel type (OPIS Oil Price Daily Thursday's posting)
- Add Soybean Oil price to Fuel Oil price
- Add/Subtract total from base price (see Section 3.8 of the Contract) 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.

3.20 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 ten (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 thirty (30) calendar days of demand.

3.21 Unanticipated Excessive Purchase

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

3.22 Contract Administration

The 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 after business hours or on weekend/holidays.

Bidder shall provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Contractor must notify OGS within five (5) 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.

3.23 NYS Financial System (SFS)

New York State is currently operating on an Enterprise Resource Planning (ERP) system, Oracle PeopleSoft software, referred to as the Statewide Financial System (SFS). SFS supports requisition-to-payment processing and financial management functions. Further information regarding business processes, interfaces, and file layouts currently in place may be found at: <http://www.sfs.ny.gov> and <https://www.osc.ny.gov/state-agencies/gfo/chapter-iii/iii1-statewide-financial-system-sfs-overview>.

3.24 Insurance

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

3.25 Report of Contract Usage

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

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

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

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

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

3.26 Contractor Requirements and Procedures for Business Participation Opportunities for NYS Certified Minority- and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women

I. New York State Law

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

II. General Provisions

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

III. Equal Employment Opportunity (EEO)

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000, for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to, the contracting State agency (the “Work”) except where the Work is for the beneficial use of the Contractor.

1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate or distinct from the Contract; or (ii) employment outside New York State.
 2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor's equal employment opportunity policy. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.
- B. Form EEO 100 - Staffing Plan. Plan
- To ensure compliance with this section, the Contractor agrees to submit or has submitted with the Bid a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.
- C. NYS Contract System Workforce Utilization Reporting Module (Commodities & Services)
- The Contractor shall complete, and shall require each of its subcontractors to complete a Workforce Audit on a quarterly basis throughout the term of this Contract, by the 10th day of April, July, October, and January to report the actual workforce utilized during the previous quarter in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. Contractor shall coordinate with its subcontractors to ensure that all workers associated with this Contract are properly counted and reported. To prepare the report, Contractor and its subcontractors shall use the NYS Contract System Workforce Audit Module found at the following website:
<https://ny.newnycontracts.com>
- The Workforce Audits must be completed electronically in the NYS Contract System Workforce Audit Module. Separate audits shall be completed by Contractor and all subcontractors, and the Contractor is responsible for ensuring timely submission of the Workforce Audit by their subcontractors. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall complete the Workforce Audit and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall complete the Workforce Audit and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.
- D. Contractor shall comply with the provisions of the Human Rights Law, all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. Contract Goals

- A. OGS hereby establishes an overall goal of 30% for MWBE participation, 15% for Minority-Owned Business Enterprises ("MBE") participation and 15% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs). The total Contract goal can be obtained by utilizing any combination of MBE and /or WBE participation for subcontracting and supplies acquired under the Contract.

- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract goals established in clause IV-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address: <https://ny.newnycontracts.com/>. The MWBE Regulations are located at 5 NYCRR § 140 – 145. Questions regarding compliance with MWBE participation goals should be directed to the Designated Contacts within the OGS Office of Business Diversity. Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women’s Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.
- C. Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract (see clause VII below).
- V. MWBE Utilization Plan
- A. In accordance with 5 NYCRR § 142.4, Bidders are required to submit a completed Utilization Plan on Form MWBE 100 with their bid.
- B. The Utilization Plan shall list the MWBEs the Bidder intends to use to perform the Contract, a description of the Contract scope of work the Bidder intends the MWBE to perform to meet the goals on the Contract, the estimated or, if known, actual dollar amounts to be paid to an MWBE. By signing the Utilization Plan, the Bidder acknowledges that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by New York State Certified MWBEs after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OGS.
- C. By entering into the Contract, Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. When an MWBE is serving as a broker on the Contract, only 25 percent of all sums paid to a broker shall be deemed to represent the commercially useful function performed by the MWBE
- D. OGS will review the submitted MWBE Utilization Plan and advise the Bidder of OGS acceptance or issue a notice of deficiency within 30 days of receipt.
- E. If a notice of deficiency is issued; Bidder agrees that it shall respond to the notice of deficiency, within seven (7) Business Days of receipt, by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the Bidder and direct the Bidder to submit, within five (5) Business Days of notification by OGS, a request for a partial or total waiver of MWBE participation goals on Form BDC 333.1. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- F. OGS may disqualify a Bidder’s bid/proposal as being non-responsive under the following circumstances:
- (a) If a Bidder fails to submit an MWBE Utilization Plan;
 - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
 - (c) If a Bidder fails to submit a request for waiver; or
 - (d) If OGS determines that the Bidder has failed to document good faith efforts.
- G. If awarded a Contract, Contractor certifies that it will follow the submitted MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in clause IV-A of this Section.

- H. Bidder/Contractor further agrees that a failure to submit and/or use such completed MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OGS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

VI. Request for Waiver

- A. Prior to submission of a request for a partial or total waiver, Bidder shall contact the Designated Contacts listed on page 1 of this document for guidance.
- B. In accordance with 5 NYCRR § 142.7, a Bidder/Contractor who is able to document good faith efforts to meet the goal requirements, as set forth in clause VII below, may submit a request for a partial or total waiver on Form BDC 333.1, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its MWBE Utilization Plan. If a request for waiver is submitted with the MWBE Utilization Plan and is not accepted by OGS at that time, the provisions of clauses V(C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) Business Days of receipt.
- C. Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If OGS, upon review of the MWBE Utilization Plan and Monthly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regard to such non-compliance, OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) Business Days of receipt. Such response may include a request for partial or total waiver of MWBE contract goals.

VII. Required Good Faith Efforts

In accordance with 5 NYCRR § 142.8, Contractors must document their good faith efforts toward utilizing MWBEs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

1. A list of the general circulation, trade and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers, copies of such solicitations and any responses thereto.
2. A list of the certified MWBEs appearing in the Empire State Development ("ESD") MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with, or obtaining supplies from, certified MWBEs.
4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
5. Dates of any pre-Bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
6. Other information deemed relevant to the request.

VIII. Monthly MWBE Contractor Compliance Report

- A. In accordance with 5 NYCRR § 142.10, Contractor is required to report Monthly MWBE Contractor Compliance to OGS during the term of the Contract for the preceding month's activity, documenting progress made towards achievement of the Contract MWBE goals. OGS requests that all Contractors use the New York State Contract System ("NYSCS") to report subcontractor and supplier payments made by Contractor to MWBEs performing work under the Contract. The NYSCS may be accessed at <https://ny.newnycontracts.com/>. This is a New York State-based system that all State agencies and authorities will be implementing to ensure uniform contract compliance reporting throughout New York State.
- B. When a Contractor receives a payment from a State agency, it is the Contractor's responsibility to pay its subcontractors and suppliers in a timely manner. On or after the first day of each month, the Contractor will receive an email or fax notification ("audit notice") indicating that a representative of its company needs to log-in to the NYSCS to report the company's MWBE subcontractor and supplier payments for the preceding month. The Contractor must also report when no payments have been made to a subcontractor or supplier in a particular month in the NYSCS. Once subcontractor and supplier payments have been entered into the NYSCS, the subcontractor(s) and supplier(s) will receive an email or fax notification advising them to log into the NYSCS to confirm that they actually received the reported payments from the Contractor. It is the Contractor's responsibility to educate its MWBE subcontractors and suppliers about the NYSCS and the need to confirm payments made to them in the NYSCS.
- C. To assist in the use of the NYSCS, OGS recommends that all Contractors and MWBE subcontractors and suppliers sign up for the following two webinar trainings offered through the NYSCS: "**Introduction to the System - Vendor training**" and "**Contract Compliance Reporting - Vendor Training**" to become familiar with the NYSCS. To view the training schedule and to register visit: <https://ny.newnycontracts.com/FrontEnd/TrainingList.asp>
- D. As soon as possible after the Contract is approved, Contractor should visit <https://ny.newnycontracts.com> and click on "**Vendor Account Lookup**" to identify the Contractor's account by company name. Contact information should be reviewed and updated if necessary by choosing "**Change Info.**" It is important that the staff member who is responsible for reporting payment information for the Contractor be listed as a user in the NYSCS. Users who are not already listed may be added through "**Request New User.**" When identifying the person responsible, please add "**- MWBE Contact**" after his or her last name (i.e., John Doe – MWBE Contact) to ensure that the correct person receives audit notices from the NYSCS. NYSCS Technical Support should be contacted for any technical support questions by clicking on the links for "**Contact Us & Support**" then "**Technical Support**" on the NYSCS website.
- E. If Contractor is unable to report MWBE Contractor Compliance via the NYSCS, Contractor must submit a Monthly MWBE Contractor Compliance Report on Form MWBE 102 to OGS, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: OGS OBD Office, 29th floor Corning Tower, Empire State Plaza, Albany, NY 12242. Phone: 518-486-9284; Fax: 518-486-9285.
- F. It is the Contractor's responsibility to report subcontractor and supplier payments. Failure to respond to payment audits in a timely fashion through the NYSCS, or by paper to OGS, may jeopardize future payments pursuant to the MWBE liquidated damages clause in clause IX below.

IX. Breach of Contract and Liquidated Damages

- A. Where OGS determines that the Contractor is not in compliance with the MWBE requirements of this Section, and the Contractor refuses to comply with such requirements, or if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, the Contractor shall be obligated to pay liquidated damages to OGS.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:

1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. If OGS determines that Contractor is liable for liquidated damages and such identified sums have not been withheld by OGS, Contractor shall pay such liquidated damages to OGS within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

X. Fraud

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

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

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

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

Article 3 of the New York State Veterans' Services Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"), thereby further integrating such businesses into New York State's economy. OGS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OGS contracts.

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

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

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

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

3.28 Environmental Sustainability and NYS Executive Order Number 22

New York State is committed to environmental sustainability, and seeks to minimize the environmental impact of any Products that the State Procures. Executive Order No. 22 *Leading By Example: Directing State Agencies to Adopt a Sustainability and Decarbonization Program* ("EO 22"), requires State Agencies, authorities, and public benefit corporations ("Affected Entities") to follow GreenNY procurement specifications for commodities, services and technology. The GreenNY specifications consider a wide range of factors including avoidance of toxic substances, pollution reduction and prevention, sustainable manufacturing, reduction of greenhouse gas

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emissions, packaging, and water conservation. Resources are available on the OGS website at <https://ogs.ny.gov/greenny-purchasing-requirements-and-tools> for procurement managers and Contractors to learn about which Contracts provide environmentally preferable Products.

A. GreenNY Specifications.

A list of currently approved specifications is located on the OGS website at <https://ogs.ny.gov/greenny/approved-greenny-specifications>.

3.29 Consumer Products Containing Mercury

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

3.30 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.

3.31 Guarantee

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

3.32 Engineering Service

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

3.33 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

In accordance with Section 889 of the National Defense Authorization Act (NDAA) for fiscal year 2019, in this Contract, Contractor or Subcontractor shall not provide to the State or Authorized User any equipment, system, or service that uses covered telecommunications equipment or services, as defined by the NDAA, as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception applies or the covered telecommunications equipment or services are covered by a waiver, as set forth in the NDAA and the rules and regulations promulgated thereunder.

3.34 NYS 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.

3.35 NYS Tax Law Section 5-a

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

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

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

3.36 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://ogs.ny.gov/procurement/nys-laws-extending-use-state-centralized-contracts>). 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.

3.37 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 this 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.

3.38 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.

3.39 Drug and Alcohol Use Prohibited

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

3.40 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.

3.41 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. If an award has been made, the Commissioner may cancel the Contract at the expense of the Contractor.
- D. **Testing** - All samples are subject to tests in the manner and place designated by the Commissioner, either prior to or after Contract award. Unless otherwise stated in the Contract, 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.

3.42 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.

3.43 Appendix B Modifications

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

- A. Section 46, *Default – Authorized User*, b *Failure to Make Payment*, is deleted and replaced with the following language:
 - b. Failure to Make Payment** In the event a participating Authorized User fails to make payment to the Contractor for Products delivered, accepted and properly invoiced, within sixty (60) calendar days of such Delivery and acceptance, the Contractor may, upon five (5) Business Days advance written notice to both the Commissioner and the Authorized User's purchasing official, suspend additional provision of Products to such entity until such time as reasonable arrangements have been made and assurances given by such entity for current and future Contract payments.
- B. Section 43 (Termination) subparagraph (b) (For Convenience) is hereby deleted in its entirety.

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, 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) 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

THE PEOPLE OF THE STATE OF NEW YORK

Signature: _____
Printed Name: _____
Title: _____
Company Name: _____
Federal ID: _____
NYS Vendor ID: _____
Date: _____

Signature: _____
Printed Name: _____
Title: _____
Date: _____

The acknowledgment must be fully and properly executed by an authorized person. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this agreement, Appendix A (Standard Clauses For New York State Contracts), Appendix B (General Specifications), Appendix C, and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, Contractor affirms that it understands and agrees to comply with the OGS procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

APPROVED AS TO FORM

Letitia James
Attorney General

APPROVED

Thomas P. DiNapoli
State Comptroller

