

**AGREEMENT FOR
GASOLINE AND E-85 (Statewide)**

BY AND BETWEEN

**NEW YORK STATE
OFFICE OF GENERAL SERVICES**

AND

[REDACTED]

CONTRACT NUMBER PC

[REDACTED]



Office of General Services
Procurement Services

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APPENDICES

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

ATTACHMENTS

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**STATE OF NEW YORK
OFFICE OF GENERAL SERVICES
AGREEMENT # PC [REDACTED]
CENTRALIZED CONTRACT FOR THE ACQUISITION OF
GASOLINE AND E-85 (STATEWIDE)**

THIS AGREEMENT (hereinafter the "Contract" or the "Agreement") is made this ____ day of _____, 2024, 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 Gasoline and E-85, as further described herein; and

WHEREAS, OGS conducted a competitive procurement to identify the bidder(s) which could provide the Gasoline and E-85 at the lowest cost, referred to as IFB #23344 (hereinafter the "IFB" or the "Solicitation"), which was advertised on [REDACTED], 2024 in the New York State Contract Reporter, as required by New York State Economic Development Law; and

WHEREAS, awards were made to Contractors per county to the responsible bidder that submitted the lowest responsive proposal 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 items in the applicable county or counties 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

This Contract results from a Solicitation issued by the New York State (“NYS”) Office of General Services (“OGS”), Procurement Services and is intended to provide Authorized Users with a means of acquiring various grades of Gasoline and E-85 by bulk delivery to Authorized Users’ storage facilities for use in the Authorized Users’ own pumps. The product shall be Contractor furnished, delivered and unloaded as specified herein.

This Contract is a centralized contract(s) based on Authorized Users’ filed requirements. There are separate awards for Gasoline and E-85 fuels, when applicable, for all counties that have filed requirements pursuant to the Solicitation.

1.2 Scope

This Solicitation contained a total of One Hundred Twenty-Five (125) Items to be awarded. The items consisted of seven (7) fuel types: Conventional (Regular, Mid-Grade, Premium), OPRG (E) (Regular, Mid-Grade, Premium), and E-85 in sixty-one (61) counties of New York State. Contractor was awarded the Items specified in Attachment 1 – *Pricing*.

The product shall be furnished, delivered and unloaded by the Contractor to Authorized Users’ storage tanks, as specified herein. The specific users, counties, and fuel grades are listed in the Delivery Schedule. See Attachments 9 and 10, *Delivery Schedule – State Agencies* and *Delivery Schedule – Non-State Agencies* respectively.

1.3 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. These Authorized Users have agreed not to enter into any other contracts for the Gasoline and E-85 that they filed for during the contract period, and the Authorized Users have agreed to purchase all of their Gasoline and E-85 needs from the contracts awarded under the Solicitation. The Contractor must furnish all quantities actually ordered at or below the Contract prices for awarded Items. The individual value of this Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered, see clause(s) in Section 4, Terms and Conditions. See Appendix B, Section 28 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 estimates in the Solicitation. Such factors include, but are not limited to, the following:

- There is no guarantee of quantities to be purchased, nor is there any guarantee that demand will continue in any manner consistent with previous purchases.
- The individual value of each Contract is indeterminate and will depend upon actual Authorized User demand and actual quantities ordered during the contract period.
- The State reserves the right to terminate any Contract for cause prior to the end of the term pursuant to the terms and conditions of the Contract. Appendix B, Section 43 (Termination) subparagraph (b) (For Convenience) is hereby deleted for purposes of this Solicitation.
- Contract pricing that is lower than anticipated could result in a higher quantity of purchases by Authorized Users than anticipated.
- In accordance with the *Delivery Schedule* clause, the Contractor(s) shall accept orders from and deliver to any State Agency placing an order through this contract even if the State Agency does not appear on the Delivery Schedule at the time of the bid opening and may accept orders for any non-State Agency or Political Subdivision not appearing on the Delivery Schedule at the time of the bid opening.
- Contract pricing that is higher than anticipated could result in a lower quantity of purchases by Authorized Users than anticipated.

Contractor agrees that actual good faith purchasing volumes during the term of this Contract could vary substantially from the estimates provided in this Solicitation.

1.4 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 this 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.

1.5 Definitions

Capitalized terms used in this Contract shall be defined in accordance with Appendix B, Section 2 *Definitions*, or as below.

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

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

"CMSA": The acronym, "CMSA" shall be used as a designation for Consolidated Metropolitan Statistical Area.

"Conventional Gasoline": shall be any gasoline which has not been certified under 40\CFR, Section 80.40.
NOTE: MAY CONTAIN UP TO A PERCENTAGE OF ETHANOL AS SPECIFIED IN SECTION 3.11 *Limits, Unleaded Gasoline (All Types)*.

"DEC": The acronym, "DEC" shall be used as a designation for Dept. of Environmental Conservation.

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

"E-10": A blend of 10% ethanol and 90% petroleum gasoline by volume.

"E-85" (Flex Fuel): A blend containing 51% to 83% ethanol and conventional regular unleaded gasoline by volume.

"ETBE": The acronym, "ETBE" shall be used as a designation for Ethyl Tertiary Butyl Ether.

"Gasoline/s": shall be a volatile mixture of liquid hydrocarbons, generally containing small amounts of additives, suitable for use as a fuel in spark-ignition, internal combustion engines.

"Gasoline-Alcohol Blend": shall be a blend consisting primarily of gasoline and an amount of one or more alcohols as described below:

Methanol: at least 1% by volume or 0.15% by mass if methanol is only alcohol present.

Other alcohols (i.e. ethanol, TBA): at least 1% by volume or 0.35% by mass.

"Gasoline-Ether Blend": shall be a blend consisting primarily of gasoline and a substantial amount (more than 0.35 mass percent oxygen) of one or more ethers.

"Human Needs Customers": High priority customers such as residences, hospitals and nursing homes for which failure to get fuel could be life threatening.

"LUST": Leaking Underground Storage Tank

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

“MON”: The acronym, "MON" shall be used as a designation for Motor Octane Number.

“MSA”: The acronym, “MSA” shall be used as a designation for Metropolitan Statistical Area.

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

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

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

“NYCRR”: The acronym, “NYCRR” shall be used as a designation for New York Codes, Rules, and Regulations.

“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.

“OPRG (E)”: The acronym "OPRG (E)" shall be used as a designation for Oxygenated fuels Program Reformulated Gasoline Ethanol.

“Oxygenated Reformulated Gasoline (OPRG {E})”: shall be a blend consisting of gasoline-alcohol, in a reformulated gasoline which is intended for use in an Oxygenated fuels Program Reformulated Gasoline control area during a program control period (i.e., 6NYCRR225.-3.4, Table 1 on page 140.2m CN 8-31-93, or latest revision thereof).

“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 (“NYSPRO”) and Procurement Services Group (“PSG”).

“RBOB”: The acronym, "RBOB" shall be used as a designation for Reformulated gasoline Blendstock for Oxygenate Blending.

“RFG”: The acronym, "RFG" shall be used as a designation for ReFormulated Gasoline.

“RON”: The acronym, "RON" shall be used as a designation for Research Octane Number.

“**RVP**”: The acronym, “RVP” shall be used as a designation for Reid Vapor Pressure.

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

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

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

“**Superfund**” shall refer to the petroleum Superfund excise tax which funds the Hazardous Substance Superfund to clean up hazardous waste sites. The tax became effective on January 1, 2023.

“**TBA**”: The acronym, “TBA” shall be used as a designation Tertiary Butyl Alcohol.

“**TW**”: Delivery by Tank Wagon of less than 5,500 gallons.

“**Volume Discount**”: shall refer to the Cents Per Gallon Discount for Orders 5,500 Gallons or Greater shown on Attachment 1 – Pricing. If no Volume Discount is entered, the Contractor is not offering a Volume Discount.

1.6 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.

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

Appendix B – General Specifications (April 2016)

Appendix C – Federal Funding Agency Mandatory Terms and Conditions

Attachment 1 – Pricing

Attachment 4 – Insurance Requirements

Attachment 8 – Report of Contract Usage

Attachment 10 – Delivery Schedule – State Agencies

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

1.7 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 this document.

2. CONTRACTOR QUALIFICATIONS

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

3. SPECIFICATIONS

3.1 Product Requirements

Contractor guarantees that the product(s) supplied will meet or exceed the minimum specifications listed in Section 3 –Specifications.

3.2 Fill and Vent Requirements/Vapor Recovery Systems

Agencies must ensure that fill and vent equipment meets NYS Standards. Contractors have the responsibility for reporting faulty or non-compliant equipment to the end users and the appropriate NYS regulatory agencies. The Authorized User shall be responsible for having the proper fuel transfer vapor recovery system(s) operating on their storage tank in accordance with 6NYCRR Subpart 230. The transfers include delivery tank(er) to purchaser storage tank (Stage I) and purchaser storage tank to vehicle tank (Stage II) systems. The Contractor shall properly use and operate fuel vapor recovery system and equipment whenever it is present on a purchaser's tank. The Contractor must utilize the equipment if present regardless of whether regulations required it due to location and throughput thresholds.

NYSDOT supports the collection of vapors during transfer to prevent emissions and the use of controls whenever present. The Fire Code of New York State at Section 2205.1.3 requires that where tanks are equipped with any type of vapor recovery system, all connections required for the safe and proper functioning of the particular vapor recovery process shall be made.

3.3 Petroleum Transfer Requirements

It is the responsibility of the Contractor to conduct deliveries in accordance with petroleum bulk storage (PBS) regulations including but not limited to 6 NYCRR part 613. An additional clarification is needed to specifically note that this will require compliance with unloading/loading provisions of the U.S. Hazardous Material Transportation Standards at 49 CFR part 177.8434 as well as the obligation to report spills to the NYSDEC spills hotline and other provisions of the PBS regulation. The requirements of 49 CFR Part 177.843 specify that the transporter must ensure that the cargo tank truck is attended at all times during unloading by a "qualified person." A person is "qualified" if they have been made aware of the nature of the hazardous material which is to be loaded or unloaded, they have been instructed on the procedures to be followed in emergencies, they are authorized to move the tank truck and has the means to do so. The transporter qualified person is considered to be attending the unloading operations if, throughout the process, they are alert and is within 25 feet of the tank truck .and must have an unobstructed view of the tank truck and delivery hose to the maximum extent practicable during the unloading operation.

NOTE:

Contractor's delivery trucks SHALL BE EQUIPPED WITH CALIBRATED METERS with the exception of motor transport, to accurately measure quantities delivered. All deliveries must be accompanied by a Delivery Ticket showing Brand or Grade and Number of Gallons Delivered. Agencies may examine, upon request, a copy of the metered ticket showing gallons loaded into the vehicle making delivery.

Supplementing §31 *Product Delivery* and § 32 *Weekend and Holiday Deliveries*, of Appendix B, General Specifications, orders will call for delivery within a specified number of days after date of order. As much time as possible should be allowed to the Contractor (with consideration for the stipulated guaranteed delivery) for making deliveries; however, the Contractor shall be in a position to make bulk deliveries within 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. Contractor must be prepared to deliver in a timely manner, on a one-time basis per Agency tank, that amount of fuel necessary to fill subject tanks for the purpose of tank testing conducted by OGS at various locations providing minimum order requirements are met. (See Section 4.9 "MINIMUM ORDER").

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.

Contractor's fuel delivery trucks shall be equipped with tight fill connections for those facilities with compatible appurtenances. On any tanks installed through the OGS Tank Modification Program, a 2-inch dry disconnect female fitting shall be required for the contractor to connect to the fill port.

Deliveries shall be made in accordance with petroleum bulk storage regulations including but not limited to 6 NYCRR Part 613, or latest revisions thereof.

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

Agencies are responsible for the implementation of monitoring programs to ensure compliance by gasoline suppliers with the specification requirements as outlined herein and in CL-804 dated July 7, 2014.

3.4 Topping Off Tanks

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

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

3.5 Trade Names

For convenience of ordering, delivering and servicing gasoline and E-85 under the contract, Contractor shall state the trade name for the gasoline offered under each type. Such trade name, however, shall not in any way set aside the requirement of compliance with specifications.

3.6 Automatic Replenishment

Requests for automatic replenishment are preferred in WRITING from an Authorized User, and may be required by the Contractor. Subsequent WRITTEN notification back from the Contractor, will establish automatic replenishment for tanks equal to or larger than 1,000 gallons.

Automatic replenishment for tank capacities less than 1,000 gallons will be at the Contractor's option. If an Authorized User has not received written notification for automatic replenishment from the Contractor, a minimum order charge may apply (see Section 4.9 Minimum Order).

Determination for total gross tank capacity shall include all manifolded tanks.

If the Contractor, after having accepted the request from an Authorized User and provided written notification back to the Authorized User for automatic replenishment, permits the level of the fuel to fall below the percentages of the total capacity of the purchaser's tank or tanks indicated in the following table, the purchaser 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.

| MINIMUM LEVEL | TOTAL TANK CAPACITY/GALS |
|---------------|--------------------------|
| 10% | 500 TO 5,500 |
| 15% | 5,501 – AND OVER |

The minimum order size of 500 gallons stipulated in Section 4.9 Minimum Order shall not apply to deliveries being made to Authorized Users on an automatic delivery schedule as the Contractor controls the frequency, delivery dates, and quantities of the deliveries being made.

3.7 Requirements - Gasoline, Unleaded Formula (Conventional & OPRG (E) Types)

The gasoline/s provided shall be volatile hydrocarbon fuels, free from water, suspended matter, and shall conform to ASTM Standard D4814-18 and its annexes, appendixes, or latest revision/s thereof.

3.8 Octane Requirements - Unleaded Formula (Conventional, OPRG (E) & E-85 Types)

The Octanes specified herein shall be provided throughout the calendar year regardless of monthly climate changes and shall be determined by:

$$\frac{\text{RON} + \text{MON}}{2}$$

| <u>Engine grade/application requirement</u> | <u>MON (minimum)</u> | <u>(RON + MON)/2 (minimum)</u> |
|---|----------------------|--------------------------------|
| Regular grade unleaded gasoline: (REG) | 82 | 87 |
| Mid-range grade unleaded gasoline: (MID) | 82 | 89 |
| Premium grade unleaded gasoline: (PREM) | 82 | 91 |
| E-85 | | 96 |

3.9 Gasoline Volatility Class (Conventional & OPRG (E) Types)

All gasoline shall comply with Federal regulation, U.S. EPA, Clean Air Act (CAA) - 1990, Title 40 of Code of Federal Regulations (40CFR) and New York State regulations [6NYCRR, Subpart 225-3.3] for Reid Vapor Pressure and Volatility Class [as defined under ASTM D4814-18, Tables 1 and 2 and Seasonal Volatility Classes, as per Table 4], or latest amendment thereof, at its seasonal time of delivery.

3.10 General Requirements, Unleaded Formula (Conventional & OPRG (E) Types)

All fuel supplied under this Contract shall be provided in full accordance with New York Code of Rules and Regulations (NYCRR), Title 6 Environmental Conservation Law, Chapter III Air Resources, Subchapter A, Part 225, (Statutory Authority: New York State Law, Article 19, Title 3, Section 19-0301, NYS Dept. of Environmental Conservation); Agriculture. & Markets. 1NYCRR, Part 224; and meet/exceed the requirements of Title 40 of the Code of Federal Regulations (40 CFR) Sections 40CFR52 through 40CFR86. **This requirement includes the providing of appropriate records at the time of gasoline delivery.**

Contractor must keep all records pertaining to this contract, including delivery tickets, purchase orders etc., for the year of the transaction and for six years thereafter. Contractor must also provide a copy of the written certifications to the agency representative at the time of order or purchase for Reid Vapor pressure, fuel content. Volatility classes as defined under ASTM D4814-18, Tables 1, 2, and 4, and quality, etc. or latest version thereof, which they must receive from their refiner or distributor pursuant to 1 NYCRR Part 224.

3.11 Limits, Unleaded Gasoline (All Types)

The maximum ethanol content shall be ten (10%) percent by volume [equivalent to three and seven tenths (3.7%) percent oxygen by weight]. To be considered for a one (1 psi) pound per square inch increase in Reid vapor pressure, the gasoline/s must have a nine (9%) to ten (10%) percent ethanol content by volume and Contractor must provide copies of the State, NYS/DEC, approval/s when the State's requirement is stricter.

3.12 General Requirements, Unleaded Gasoline OPRG (E)

OPRG (E) gasolines shall be manufactured by EPA registered producer or supplied via a registered importer. Additionally, all OPRG (E) gasoline supplied under this Contract shall be certified under 40\CFR Section 80.40 to meet the standards and requirements prescribed within Section 80.41. Additive packages for OPRG (E) gasoline shall comply with the standards and be certified on a stand-alone basis.

Contractor shall provide documentation confirming registration and certification details for each OPRG (E) gasoline at the Bid opening, or as the registered, certified, fuels become available within EPA guidelines.

If Contractor cannot document registration & certification requirements, then the State reserves the right to consider the next ranking Bidder under the Solicitation qualified to supply the OPRG (E) type for period of supply that is required. When an existing certification is found by EPA to be non-conforming product, then the EPA reserves the right to revoke that certification. If a certification is revoked the Contractor shall immediately discontinue use of that OPRG (E) gasoline and notify the NYS OGS purchasing officer. Documentation for a replacement formulation shall also be provided to OGS. If certification is not provided, OGS will act to ensure a replacement formulation via another contractor within the terms of the Solicitation.

Additionally, when the Contractor is supplying only OPRG (E) gasoline for an area which is designated as requiring only conventional gasoline, then the State reserves the right to consider the next ranked Bidder under the Solicitation that is qualified/offering to supply the conventional gasoline to that area for the balance of the period of supply that is required.

3.13 Reformulated Gasoline, OPRG Type for the NYC-CMSA Requirements

Gasoline, OPRG Type Reformulated (Alcohol/Ether/Oxygenated Blends)

This section of the detailed specification shall describe the Oxygenated fuels Program Reformulated (OPRG) Gasolines including the following: gasoline-alcohol, gasoline-ether, and gasoline-oxygenate blend(s) (of) fuel(s), or combination blends thereof which are formulated for use in the New York City CMSA, or other designated [severe non-attainment] MSA's (if any). These blends SHALL NOT be supplied or offered for the conventional or reformulated gasoline specified elsewhere herein, except as superseded by Federal & State regulation. Its use shall be limited to the counties specified hereinafter. ASTM Test Method D4815-15b, or latest version thereof shall be used to determine ether and oxygenate content of the fuel, until it is replaced or updated by the U.S. EPA test method (i.e., final rule action).

Alcohol-ether-blend/oxygenated OPRG gasoline shall meet or exceed the requirements stated previously herein for Conventional Unleaded Formula Gasoline and its own specific requirements as stated hereinafter.

3.14 Distribution, Gasoline, OPRG Type Reformulated (Alcohol/Ether/Oxygenated Blends)

Per Federal and State regulation, oxygenated (OPRG) gasoline shall be provided in the New York City Consolidated Metropolitan Statistical Area (New York City CMSA), and all other non-attainment area(s) that Filed Requirements for OPRG (E), if applicable.

As of the closing of filed requirements, these control/distribution areas shall include the following counties: New York City CMSA and other non-attainment area(s):

- Bronx
- Dutchess
- Kings
- Nassau
- New York
- Orange
- Putnam
- Queens
- Richmond
- Rockland
- Suffolk
- Westchester

The control/distribution areas serviced by this Contract/specification shall be amended as required to comply with the latest revision of Federal regulation, U.S. EPA, Clean Air Act (CAA) - 1990, Title 40 of Code of Federal Regulations (40CFR), or latest amendment thereof, and State regulation, NYCRR, Title 6, Chapter III, Subchapter A, Part 225; and Agriculture. & Markets. 1NYCRR, Part 224.

3.15 OPRG (E) Type Gasoline, for the Ozone Non-Attainment Areas

Gasoline, OPRG (E) Type Product provided shall be in accordance with ASTM D4814-18, Section 3 Terminology, ASTM D4815-15b (when applicable), or latest version(s) thereof and as defined in Section 1.5 Definitions.

3.16 Requirements, Gasoline, Type Reformulated

This section of the detailed specification shall describe the OPRG (E) Gasolines which shall meet the emissions reduction for 2000 and beyond using the applicable formula standard/s stated in 40\CFR Section 80.41.

OPRG (E) gasoline shall meet or exceed the requirements stated previously herein for Conventional & OPRG (E) Unleaded Gasoline and its own specific requirements as stated hereinafter.

However, the State reserves the right to adjust quantities and establish (adjust via contractual terms elsewhere within the specifications of this Contract) the pricing for these blends as they become available in the specified counties (or others).

The control/distribution areas serviced by this Contract/specification shall be amended as required to comply with the latest revision of Federal regulation, U.S. EPA, Clean Air Act (CAA) - 1990, Title 40 of Code of Federal Regulations (40CFR), Part 80 Regulation of Fuels & Fuel Additives, Standards for OPRG(E) & Conventional Gasoline, (Final Rule), or latest amendment thereof; and State regulations: Title 6, NYCRR, Chapter III, Subchapter A, Part 225; and Agriculture. & Markets. 1NYCRR, Part 224

3.17 Requirements – E-85 (Table)

ASTM D5798-17 STANDARD SPECIFICATION FOR FUEL ETHANOL (E_d75-E_d85)
FOR AUTOMOTIVE SPARK-IGNITION ENGINES

| PROPERTY | VALUE FOR CLASS | | | TEST METHOD |
|---|------------------|------------------|-------------------|---|
| ASTM volatility class* | 1 | 2 | 3 | N/A |
| Ethanol, plus higher alcohols (minimum, volume %) | 79 | 74 | 70 | ASTM D5501-12(2016) |
| Hydrocarbons (including denaturant)/ (volume %) | 17-21 | 17-26 | 17-30 | ASTM D4815-15b |
| Vapor pressure at 37.8°C kPa psi | 38-59 5.5-8.5 | 48-65 7.0-9.5 | 66-83 9.5-12.0 | ASTM D4953-15, D5191-15 |
| Lead (maximum, mg/L) | 2.6 | 2.6 | 3.9 | ASTM D5059-14 |
| Phosphorus (maximum, mg/L) | 0.3 | 0.3 | 0.4 | ASTM D3231-13 |
| Sulfur (maximum, mg/kg) | 210 | 260 | 300 | ASTM D3120-08 (2014), D1266-13, D2622-16 |
| Methanol (maximum, volume %) | | 0.5 | | N/A |
| Higher aliphatic alcohols, C3-C8 (max., volume %) | | 2 | | N/A |
| Water (maximum, mass %) | | 1.0 | | ASTM E203-16 |
| Acidity as acetic acid (maximum, mg/kg) | | 50 | | ASTM D1613-17 |

| | | | | |
|--|--|------|--|---|
| Inorganic chloride (maximum, mg/kg) | | 1 | | ASTM D512-12, D2988-96 (2015) |
| Total chlorine as chlorides (maximum, mg/kg) | | 2 | | ASTM D4929-17 |
| Gum, unwashed (maximum, mg/100 mL) | | 20 | | ASTM D381-12 (2017) |
| Gum, solvent-washed (maximum, mg/100 mL) | | 5.0 | | ASTM D381-12 (2017) |
| Copper (maximum, mg/L) | | 0.07 | | ASTM D1688-17 |
| Appearance | Product shall be visibly free of suspended or precipitated contaminants (shall be clear and bright). | | | Appearance determined at ambient temperature or 21°C (70°F), whichever is higher. |
| N/A = Not applicable | | | | |
| Octane (R+M)/2 | Minimum of 96 for E-85 | | | |

*For seasonal and geographic volatility specifications for E-85 reference specification ASTM D5798-17, or latest version thereof.

3.18 Related Requirements for Storage, Transfer, & Wholesale Purchaser-Consumer Posting

Tanks/S (Storage), Gasoline-Alcohol Blend

The storage tank(s) for gasoline-alcohol blend fuel shall be clean the first time this blend of fuel is placed in the tank. The tank shall be new or cleaned [all water and precipitated-accumulated material (i.e., dyes, lacquers, varnishes, gums, etc.) shall be removed from the tank]. This tank cleaning shall be provided in full compliance with 1NYCRR, Subpart 224.8.

3.19 Labels

The Contractor shall provide fuel content labels/signs for each pumping station.

These labels shall identify significant amounts of alcohols in the fuel and satisfy the requirements of 1NYCRR, Part 224 and 6NYCRR, Part 225. An environmental awareness decal/label shall be provided and displayed on each affected pump.

4. TERMS AND CONDITIONS

4.1 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 December 13, 2024, or upon the date of OSC approval of the final executed documents, whichever is later, and the Contract term shall end on December 10, 2026, or Two (2) years from the date of OSC approval, whichever is later.

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

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).

4.2 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), this Contract may be extended unilaterally by the State for an additional period of up to 90 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 days. However, unless otherwise noted in the extension notification or agreement, this extension automatically terminates should a replacement contract be issued in the interim.

4.3 Price

Pricing will be shown on Attachment 1 – *Pricing*.

Prices quoted shall be billed net per gallon, F.O.B. Authorized User storage tanks, including all applicable customs, duties, taxes (e.g., Superfund), including LUST, license fees and surcharges, and as designated by the ordering Authorized User. Bid prices must be expressed in U.S. currency and shall be submitted up 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. Authorized Users that are on automatic delivery, shall be priced on the day of delivery, unless the Authorized User requests a separate delivery from their automatic delivery schedule. The price shall then reflect the day of the order for the separate delivery.

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

Contractor may extend allowances during the term of the Contract to Federal, State, Local Governments or to commercial users in the normal course of doing business, and 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 under similar contractual terms and conditions. Contract prices shall be firm except that price revisions shall be permitted in accordance with the PRICE REVISIONS clause and with respect to certain taxes and duties as follows:

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

"After-relieved tax" means any amount of Federal, State and local excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on fuel purchased under the Contract which the Contractor is not required to pay or bear the burden of, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial or administrative action taking effect after the date of Contract award. The Contract price shall include all applicable customs, duties, taxes, license fees and surcharges as stated in Appendix B, Section 8 *Taxes*.

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

The price for fuel under this Contract shall be increased by the amount of any after-imposed tax, unless the legislative, judicial or administrative act says otherwise, if the Contractor states in writing that such Contract price does not include any contingency for such after-imposed tax. Such increase shall be prospective only and becomes effective upon such written notice and on the effective date of the next scheduled price revision. The price for fuel under this Contract shall be decreased by the amount of any after-relieved tax. Such decrease shall be effective when realized or by no later than the next scheduled price revision.

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

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

4.4 Price Updates

Contract prices shall be firm except that price revisions will be permitted in accordance with the following procedure: Revisions to the original Contract price shall be based on prices published in the OPIS (OIL PRICE INFORMATION SERVICE) Weekly Published Newsletter as indicated in the chart below. The weekly average of the daily high and low prices shown in the publication for each of the three-conventional unleaded gasoline fuel types, RBOB, Pre-RBOB and Ethanol will be used to compute price revisions during the contract period.

| Location in OPIS Newsletter | Fuel | Weekly Averages Spot Report location |
|------------------------------------|----------|--------------------------------------|
| Page 2 – In Cash Markets Northeast | Reg Unl | Linden Weekly Average |
| Page 2 – In Cash Markets Northeast | Mid Unl | Linden Weekly Average |
| Page 2 – In Cash Markets Northeast | Pre Unl | Linden Weekly Average |
| Page 2 – In Cash Markets Northeast | RBOB | NY Harbor Barge Weekly Average |
| Page 2 – In Cash Markets Northeast | Pre RBOB | NY Harbor Barge Weekly Average |
| Page 10 – Spot Market Prices | Ethanol | New York |

Please note: base prices were calculated using the following methods using the information from OPIS (OIL PRICE INFORMATION SERVICE) Weekly Published Newsletter (June 3, 2024 Vol. 46, No. 23):

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- Conventional gasoline base prices are the published Linden Weekly Averages.
- OPRG (E) Gas Regular base price is calculated by taking 90% of the RBOB value and adding it to 10% of the ethanol value.
- OPRG (E) Gas Mid Range base price is calculated by taking 90% of the average of RBOB and Pre RBOB and adding it to 10% of the ethanol value.
- OPRG (E) Gas Premium base price is calculated by taking 90% of Pre RBOB value and adding it to 10% of the ethanol value.
- E-85 base price is calculated by taking 15% of Conventional Gas Regular value and adding it to 85% of the ethanol value.

Procurement Services will compute any price revisions by determining the difference between the weekly average of the daily high and low prices (base prices) published in the Cash Markets – Weekly Average Spot Report on June 3, 2024 and the weekly average of the daily high and low prices published on Monday every week during the Contract period beginning with the publication on December 23, 2024 or the publication immediately following the start date of the Contract, whichever occurs first. This differential (adjustment) + or - will be added to the base bid prices. Applicable price changes will be effective as of the start of business on the Friday immediately preceding the day of publication. Generally, the weekly average published in OPIS represents a 5-day average of high and low prices; however, as holidays occur which would eliminate a given daily range of prices, the weekly average may represent less than a 5-day average. Regardless of the number of days represented in the weekly average, the published weekly average will be utilized as the basis for price revisions. Final price shall be calculated by applying the above stated price revision to the base bid price.

The State reserves the right to change to a daily, bi-weekly or monthly schedule in price revisions if the market conditions so warrant.

Should postings become unavailable or differ from current description and/or format, a posting determined by the Commissioner of the Office of General Services in their sole discretion, to be most reflective of market conditions, will be used.

Corrections to posted prices previously published will be considered when caused by a typographical or clerical error on the part of said publisher.

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

(1) Price increases are limited to changes in pre-selected postings as noted above. Increases in Contract costs or prices to compensate for other increases in the cost of doing business, regardless of where such cost increases are attributable, will not be allowed during the Contract period.

(2) The EPA has determined that gasoline sold in certain counties: Bronx, Dutchess, Essex (portion of), Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, and Westchester [in the New York City Consolidated Metropolitan Statistical Area (CMSA)], are subject to regulations mandating the use of OPRG(E) gasoline. Recognizing that pricing differentials occur on a regular basis; the State will incorporate the following methodology in the determination of the weekly price revision in the following examples.

EXAMPLE: METHODOLOGY FOR RBOB AND ETHANOL ADJUSTMENTS (OPRG (E) UNLEADED FUEL TYPES)

Posted Date: (hypothetical) June 3, 2024

RBOB x .90 + Ethanol x .10 = Blended Average

2.4649 x .90 = 2.2184(1)

1.9206 x .10 = 0.1920(6)

Blended Average

2.2184 + 0.1920 = 2.4104

Posted Date: (Hypothetical) August 19, 2024

RBOB x .90 + Ethanol x .10 = Blended Average

2.4314 x .90 = 2.1883(6)

1.9150 x .10 = 0.1915(0)

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Blended Average
 $2.1883 + 0.1915 = 2.3798$

ADJUSTMENT CALCULATION

August 19, 2024 Blended Average \pm June 3, 2024 Base Blended Average =
 Adjustment
 $2.3798 - 2.1405 = +.2393^*$

*This figure being a positive number will be added to the base Bid price. If the figure is a negative number, it would be subtracted from the base Bid price. For the OGS web based posted pricing this adjustment will be added or subtracted to the base Bid price.

EXAMPLE: METHODOLOGY FOR E-85 ADJUSTMENTS

Posted Date: (Hypothetical) June 3, 2024
Regular Unleaded x .15 + Ethanol x .85 = Blended Average
 $2.4575 \times .15 = .3686(2)$
 $1.9206 \times .85 = 1.6325(1)$

Blended Average
 $.3686 + 1.6325 = 2.0011$

Posted Date: (Hypothetical) August 19, 2024
Regular Unleaded x .15 + Ethanol x .85 = Blended Average
 $2.4024 \times .15 = .3604(6)$
 $1.9150 \times .85 = 1.6277(5)$

Blended Average
 $.3604 + 1.6277 = 1.9881$

ADJUSTMENT CALCULATION

August 19, 2024 Blended Average \pm June 3, 2024 Base Blended Average = Adjustment
 $1.9881 - 2.0011 = -.0130^*$

*This figure being a negative number will be subtracted from the base Bid price. If the figure is a positive number it would be added to the base Bid price. For the OGS web based posted pricing this adjustment will be added or subtracted to the base Bid price.

ALL FIGURES ARE TRUNCATED TO FOUR DECIMAL PLACES IN DOLLARS PER GALLON.

(3) Contractor shall designate for its Contract an individual, the individual's position in the company and telephone number, who will be responsible for and authorized to act on behalf of the company with respect to these price adjustments.

4.5 OPIS Posting Locations Pricing

OPIS Posting Locations have been established for all counties. The pricing based on the weekly average published prices on June 3, 2024 for N.Y. Harbor Barge, Linden, and Spot Market Price for New York Ethanol are shown in the table below, by fuel grade:

| Fuel Grade | Price Based on Linden Weekly Average | Price Based on NY Harbor Barge Weekly Average and Ethanol | Price Based on New York Spot Market Price and Linden Weekly Average |
|------------------|--------------------------------------|---|---|
| Regular Unleaded | \$2.4575 | N/A | N/A |
| Mid Unleaded | \$2.6825 | N/A | N/A |

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| | | | |
|-------------------|----------|----------|----------|
| Premium Unleaded | \$3.0200 | N/A | N/A |
| OPRG(E) Regular | N/A | \$2.4105 | N/A |
| OPRG(E) Mid Range | N/A | \$2.5260 | N/A |
| OPRG(E) Premium | N/A | \$2.6417 | N/A |
| E-85 | N/A | N/A | \$2.0011 |

4.5.1 Location Change or Substitution

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

4.5.2 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 their sole discretion, to be most reflective of market conditions will be used.

4.5.3 Product Change or Substitution

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

4.6 Best Pricing Offer

During the Contract term, if the Commissioner becomes aware that the Contractor is selling substantially the same or a smaller quantity of a Product outside of this Contract upon the same or similar terms and conditions as that of this Contract at a lower price to a federal, state or local governmental entity, the price under this Contract, after consultation with the Contractor, may be reduced to a lower price on a prospective basis at the discretion of the Commissioner. The Commissioner reserves the right to request information to verify pricing for the purposes of this clause.

4.7 Price Structure

If, during the Contract Term, the Contractor is unable or unwilling to meet contractual requirements in whole or in part based on the price structure of the Contract, it shall immediately notify the Office of General Services, Procurement Services in writing. Such notification shall not relieve the Contractor of its responsibilities under the Contract. The State may, but is not required to, consider an equitable adjustment in the Contract terms and/or pricing in the circumstances outlined in Appendix B, Section 44 *Savings/Force Majeure*.

Should the Commissioner in their sole discretion determine during the Contract Term that (i) the Contract price structure is unworkable, detrimental, or injurious to the State, or (ii) the Contract price structure results in prices which are unreasonable, excessive, or not truly reflective of current market conditions, and no adjustment in the Contract terms and/or pricing is mutually agreeable, the State may terminate the Contract upon 10 business days written notice mailed to the Contractor.

Should the OPIS posting locations used for fuel price adjustments/revisions become unworkable or unavailable, the Commissioner reserves the right to switch to the most appropriate index and/or location and adjust the base price(s) accordingly. Please refer to clause 6.5, OPIS Posting Locations Pricing. for additional factors.

4.8 Ordering

Purchase Orders shall be made in accordance with the terms set forth in Appendix B, Section 30 *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 Username, and sales representative (if applicable).

4.9 Minimum Order

Minimum delivery shall be 500 gallons to each tank at each delivery location (site) as determined by the Delivery Schedule. Minimum order for Motor Transport deliveries shall be 5,500 gallons. Deliveries under 500 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. In addition, the following surcharge may be utilized by the Contractor (except for automatic replenishment):

Determination for total gross tank capacity shall include all manifolded tanks. All locations granted a request from the Contractor for "automatic replenishment" per Section 3.6 Automatic Replenishment, 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."

| Quantity Delivered | Optional Surcharge |
|--------------------|--------------------|
| Under 500 | \$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.

4.10 Invoicing and Payment

Invoicing and payment shall be made in accordance with the terms set forth in Appendix B, Section 45 *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

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- 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>.

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

4.11 Product Delivery

Delivery of all Contract Products shall be made in accordance with Appendix B, Section 31 *Product Delivery* and Section 33 *Shipping/Receipt of Product*. Delivery shall be made as specified and in accordance with instructions furnished with each order, unless otherwise directed in writing. Contractor must be prepared, at all times, to make prompt delivery. Every bid states what the maximum time a delivery will take from the moment of order, but the time shall never exceed forty-eight (48) hours. . In State declared emergencies, fuel must be delivered within eight (8) to twelve (12) hours of notification. Should there be a State declared emergency, an after-hours or weekend emergency, or should an agency run out of fuel at any time creating an emergency situation, the Contractor shall be required to provide product within eight (8) to twelve (12) hours of a telephone call from the agency.

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

Failure to make prompt delivery may result in an Authorized User's submission of a Contract Performance Report to OGS. In addition to any available remedies per Appendix B, Section 48 *Remedies for Breach*, (a), (d) and (e), 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.

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.

4.12 Method of Delivery

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

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

4.13 Delivery Schedule

The delivery schedules, based on Authorized Users' requirements submitted to Procurement Services by Requirement Letter RL215, are available as a guide to indicate proposed delivery points and estimated annual quantities. This information is available to clarify delivery conditions, where possible. Any specific questions regarding the site conditions should be directed to the end-user via any communication available, as shown on the Delivery Schedule. The Delivery Schedules are attachments to this Contract, and any updates, (if any) will be posted to the OGS website.

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

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

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

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

4.14 Product Returns and Exchanges

In addition to the provisions of Appendix B, Section 34 *Title and Risk of Loss for Products Other than Technology Products*, Section 35 *Product Substitution*, and Section 36 *Rejected Product*, Products returned or exchanged due to quality problems, duplicated shipments, outdated Product, incorrect Product shipped, Contractor errors otherwise not specified, or Products returned or exchanged due to Authorized User errors, shall be replaced with specified Products or the Authorized User shall be credited or refunded for the full purchase price.

Products shall be replaced within 10 business days of written notification to the Contractor of the Authorized User's intent to return or exchange the Product. Contractor can charge only a restocking fee for Product returned or exchanged due to Authorized User error that is determined not to be suitable for resale; the restocking fee cannot exceed the net price of the returned or exchanged Product.

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

4.15 Unanticipated Excessive Purchase

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

4.16 Contract Administration

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

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

4.17 NYS Financial System (SFS)

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

The State may be implementing additional PeopleSoft modules in the near future. Further information regarding business processes, interfaces, and file layouts currently in place may be found at: <http://www.sfs.ny.gov> and <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

4.18 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*.

4.19 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 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, Section 43 *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.

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

I. New York State Law

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

II. General Provisions

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

III. Equal Employment Opportunity (EEO)

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

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

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

B. NYS Contract System Workforce Utilization Reporting Module (Commodities & Services)

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

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

IV. Contract Goals

- A. For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers, or suppliers to Contractor. Contractor is, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at: <https://ny.newnycontracts.com/>. Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

B. Good Faith Efforts

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

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

V. Fraud

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

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

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

4.21 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/>

4.22 Environmental Sustainability and NYS Executive Order Number 22

New York State is committed to environmental sustainability and endeavors to procure Products with reduced environmental impact. One example of this commitment may be found in Executive Order No. 22 (Leading By Example: Directing State Agencies to Adopt a Sustainability and Decarbonization Program), which imposes certain requirements on State Agencies, authorities, and public benefit corporations when procuring Products. More information on Executive Order No. 22, including specifications for offerings covered by this Contract, may be found at <https://ogs.ny.gov/greenny/>. State entities subject to Executive Order No. 22 are advised to become familiar with the specifications that have been developed in accordance with the Order, and to incorporate them, as applicable, when making purchases under this Contract.

4.23 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. 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.

4.24 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, under this Contract or any subcontract resulting from 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.

4.25 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 this 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. Spills of any size shall be immediately reported to the agency Business Office to effect contact with a representative of the

Department of Environmental Conservation. More information can be viewed at:
<http://www.dec.ny.gov/chemical/8428.html>

A call can be placed twenty-four (24) hours a day with the New York State Oil Spill Hotline at 1-800-457-7362.

4.26 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 Authorized User(s) 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.

4.27 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 their sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when they discover 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 they 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.

4.28 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.

4.29 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, Section 25 *Participation in Centralized Contracts*. For Purchase Orders issued by the Port Authority of New York and New Jersey (or any other authorized entity that may have delivery locations adjacent to New York State), the terms of the *Price* clause shall be modified to include delivery to locations adjacent to New York State.

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

4.30 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.

4.31 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.

4.32 Centralized Contract Modifications

- A. OGS, an Authorized User, or the Contractor may suggest modifications to the Centralized Contract or its Appendices. Except as specifically provided herein, modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the parties. Modifications may take the form of an update or an amendment. "Updates" are changes that do not require a change to the established Centralized Contract terms and conditions. A request to add new Products at the same or better price level is an example of an update. "Amendments" are any changes that are not specifically covered by the terms and conditions of the Centralized Contract, but inclusion is found to be in the best interest of the State. A request to change a contractual term and condition is an example of an amendment.
- B. Updates to the Centralized Contract and the Appendices may be made in accordance with the contractual terms and conditions to incorporate new Products, make price level revisions, delete Products, or to make such other updates to the established Centralized Contract terms and conditions, not resulting in a change to such terms and conditions, which are deemed to be in the best interest of the State.
- C. OGS reserves the right to consider modifications which are not specifically covered by the terms of the Centralized Contract but are judged to be in the best interest of the State. Such modifications are deemed amendments to the Centralized Contract and may require negotiations between Contractor and OGS before execution.

- D. Modifications proposed by OGS or an Authorized User, including updates and amendments, shall be processed in accordance with the terms of the Centralized Contract and Appendix B, Section 26 *Modification of Contract Terms*.

4.33 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 the Contract.

4.34 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.

4.35 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 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 cancellation of the Contract. Samples must be submitted free of charge and be accompanied by the Contractor's name and address, any descriptive literature relating to the Product and a statement indicating how and where the sample is to be returned. Where applicable, samples must be properly labeled with the appropriate Contract reference.

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

- B. **Enhanced Samples** - When an approved sample exceeds the minimum specifications, all Product delivered must be of the same enhanced quality and identity as the sample. Thereafter, in the event of a Contractor's default, the Commissioner may procure a Product substantially equal to the enhanced sample from other sources, charging the Contractor for any additional costs incurred.
- C. **Conformance with Samples** - Submission of a sample (whether or not such sample is tested by, or for, the Commissioner) and approval thereof shall not relieve the Contractor from full compliance with all terms and conditions, performance related and otherwise, specified in the Contract. If in the judgment of the Commissioner the sample or Product submitted is not in accordance with the specifications or testing requirements prescribed in the Contract, the Commissioner may cancel the Contract at the expense of the Contractor.
- D. **Testing** - All samples are subject to tests in the manner and place designated by the Commissioner, either prior to or after Contract award. Unless otherwise stated 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.

4.36 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.

4.37 Purchasing Card Orders

If the Contractor accepts orders using the State's Purchasing Card (see Appendix B, Section 15 *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.

4.38 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.

4.39 Supplier Certificate

Contractor shall be an established refiner, distributor or authorized dealer. The Commissioner reserves the right to investigate or make any inquiry into the capabilities of Contractor to properly perform under this Contract. See Appendix B, Participation in Centralized Contracts and Employees, Subcontractors, and Agents.

4.40 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 during the duration of the Contract term.

5. GENERAL PROVISIONS

5.1 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 herein, and (ii) if to Contractor, addressed to Contract Administrator at the address set forth herein.

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

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

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

5.2 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.

5.3 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.

5.4 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.

5.5 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.

[SIGNATURE PAGE FOLLOWS]

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 the later of December 13, 2024 or on the date of OSC approval. The State further warrants that, where Contractor is asked to execute multiple original copies of this signature page along with a complete original copy of the Contract, the approved signature page(s) will be affixed by the State, upon receipt of all necessary approvals, to additional copies of this Contract which conform exactly to the complete original copy as submitted by Contractor and executed simultaneously therewith.

CONTRACTOR

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

THE PEOPLE OF THE STATE OF NEW YORK

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

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

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

STATE OF _____ }

: ss:

COUNTY OF _____ }

On the _____ day of _____ in the year 20____, before me personally appeared _____, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that _he maintains an office at _____

and further that:

[Check One]

☐ **If an individual):** _he executed the foregoing instrument in his/her name and on his/her own behalf.

☐ **If a corporation):** _he is the _____ of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, _he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

☐ **If a partnership):** _he is the _____ of _____, the partnership described in said instrument; that, by the terms of said partnership, _he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

☐ **If a limited liability company):** _he is a duly authorized member of _____, LLC, the limited liability company described in said instrument; that, _he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Signature of Notary Public

Notary Public Registration No. _____ State _____