

**AGREEMENT FOR
ULTRA-LOW SULFUR DIESEL AND
BIODIESEL FUEL (ON-ROAD USE ONLY) (CERTAIN COUNTIES)**

BY AND BETWEEN

NEW YORK STATE

OFFICE OF GENERAL SERVICES

AND

[REDACTED]

CONTRACT NUMBER PC [REDACTED]



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**STATE OF NEW YORK
OFFICE OF GENERAL SERVICES
AGREEMENT # PCXXXXX
CENTRALIZED CONTRACT FOR THE ACQUISITION OF
ULTRA-LOW SULFUR DIESEL & BIODIESEL FUEL
(ON-ROAD USE ONLY) (CERTAIN COUNTIES)**

THIS AGREEMENT (hereinafter the “Contract” or the “Agreement”) is made this [REDACTED] day of [REDACTED], 2023, 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 Ultra-Low Sulfur Diesel & Biodiesel Fuel (On-Road Use Only), as further described herein; and

WHEREAS, OGS conducted a competitive procurement to identify the bidder(s) which could provide the Ultra-Low Sulfur Diesel & Biodiesel Fuel (On-Road Use Only) at the lowest cost, referred to as IFB #23298 (hereinafter the “IFB” or the “Solicitation”), which was advertised on April 28, 2023 in the New York State Contract Reporter, as required by New York State Economic Development Law; and

WHEREAS, awards were made to Contractors by Item based on lowest price to responsive and responsible Bidders who are able to meet the terms and conditions of the Solicitation, and who offer the best overall pricing in accordance with the Method of Award clause described in the Solicitation; and

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

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

1. INTRODUCTION

1.1 Overview

The purpose of this Contract is to provide State Agencies and Non-State Agencies with a method to procure ULS Diesel Regular, ULS Diesel Premium, B5 Biodiesel and B10 Biodiesel fuels by bulk delivery.

1.2 Scope

This Contract is based on the ultra low sulfur diesel and biodiesel fuel requirements submitted to OGS by authorized NYS contract users and, depending on award, may include up to four (4) diesel fuel types (Regular, Premium, B5 Biodiesel and B10 Biodiesel) awarded by fuel type within each county.

All products provided shall be homogenous diesel fuel, suitable for diesel engines, and they shall conform to the requirements of ASTM D975, Table 1, or latest revision thereof, except as listed differently herein, and ASTM D7467 for Biodiesel Blends (B6 to B20) or latest version thereof. 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 Schedules. See Attachments 2 and 3, *Delivery Schedule – State Agencies* and *Delivery Schedule – Non-State Agencies* respectively.

The scope of each fuel type is as follows:

1.2.1 Diesel Regular

The symbols 2D and/or 2-D shall be used as a grade designation for middle distillate diesel fuel oils used in vehicular diesel engines and in non-vehicular applications having frequently varying loads and speeds. Shall also be known as Regular.

1.2.2 Diesel Premium

The symbols 2PD and/or 2-PD shall be used as a grade designation for premium distillate diesel fuel oils used in vehicular diesel engines and in non-vehicular applications having frequently varying loads & speeds along with requirements for higher cetanes, special enhancers & inhibitors. Shall also be known as Premium.

1.2.3 B5 Biodiesel

The designation B5 Biodiesel shall refer to a fuel blend containing 5% Biodiesel fuel with 95% Ultra-Low Sulfur Diesel Fuel. The intended use of the B5 Biodiesel fuel blend described herein is for use in all diesel fuel consuming vehicles and equipment systems suitable for such fuel and provided that the fuel is consumed within a period of six months.

1.2.4 B10 Biodiesel

The designation B10 Biodiesel shall refer to a fuel blend containing 10% Biodiesel fuel with 90% Ultra-Low Sulfur Diesel Fuel. The intended use of the B10 Biodiesel fuel blend described herein is for use in all diesel fuel consuming vehicles and equipment systems suitable for such fuel and provided that the fuel is consumed within a period of six months.

NOTE: Prospective users of any of these biofuels are cautioned to carefully read and understand the section titled "Biodiesel Usage Considerations" before deciding to purchase and use these fuels.

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 Contractor must furnish all

quantities actually ordered at or below the Contract prices The individual value of this Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered. Authorized Users will be encouraged to purchase from Contractors who offer the Products and pricing that best meet their needs in the most practical and economical manner. See Appendix B, Estimated/Specific Quantity Contracts and Participation in Centralized Contracts.

Numerous factors could cause the actual quantities of Products purchased under this Contract to vary substantially from the 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 this 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 Contract.
- Contract pricing that is lower than anticipated could result in a higher quantity of purchases by Authorized Users than anticipated.
- Contract pricing that is higher than anticipated could result in a lower quantity of purchases by Authorized Users than anticipated.
- In accordance with the Delivery Schedules clause, the Contractor(s) shall accept orders from and deliver to any State Agency placing an order through this Contract, even if the State Agency does not appear on the Delivery Schedule at the time of the Solicitation's bid opening. The Contractor(s) may accept orders, at their discretion, for any non-State Agency or Political Subdivision not appearing on the Delivery Schedule at the time of the bid opening

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

1.4 Definitions

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

1D (1-D): The symbols 1D and/or 1-D shall be used as a grade designation for light distillate diesel fuel oils meeting the requirements of ASTM D975 used in vehicular diesel engines and in higher volatility applications than provided by grade 2-D fuel oils. Kerosene (1-K) meeting and/or exceeding the parameters stated herein for 1D will be considered in lieu of 1D as part of this specification/solicitation.

2D (2-D): The symbols 2D and/or 2-D shall be used as a grade designation for middle distillate diesel fuel oils meeting the requirements of ASTM D975 used in vehicular diesel engines and in non-vehicular applications having a frequently varying loads and speeds. Shall also be known as Regular.

2PD (2-PD): The symbols 2PD and/or 2-PD shall be used as a grade designation for premium distillate diesel fuel oils meeting the requirements of ASTM D975 used in vehicular diesel engines & in non-vehicular applications having frequently varying loads & speeds along with requirements for higher cetanes, special enhancers & inhibitors. Shall also be known as Premium.

Agency or Agencies: The State of New York, acting by or through one or more departments, boards, commissions, offices or institutions of the State of New York.

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

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

B5: A blend of 5% Biodiesel and 95% 1D, 2D or 2PD petroleum-based diesel fuels meeting the requirements of ASTM D975.

B10: A blend of 10% Biodiesel and 90% 1D, 2D or 2PD petroleum-based diesel fuel meeting the requirements of ASTM D7467.

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

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

“**CFPP**” shall be used as a designation for the Cold Filter Plugging Point of the fuel.

“**DEC**” shall be used as a designation for Department of Environmental Conservation.

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

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

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

“**LUST**” refers to Leaking Underground Storage Tank

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

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

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

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

“**NYS Vendor ID**” shall mean the ten-character identifier issued by New York State when a vendor is registered on the Vendor File.

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

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

“**Preferred Source Program**” shall refer to the special social and economic goals set by New York State in State Finance Law § 162 that require a governmental entity purchase select Products from designated

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

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

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

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

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

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

“**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.

“**Volume Discount**” shall refer to the Cents Per Gallon discount for orders 5,500 gallons or greater that a Bidder enters in Attachment 1 – *Pricing*. If no Volume Discount is entered, the Contractor is not offering a volume discount.

1.5 Appendices and Attachments

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

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 2 – Delivery Schedule – State Agencies

Attachment 3 – Delivery Schedule – Non-State Agencies

Attachment 4 – Insurance Requirements

Attachment 5 – Report of Contract Usage

Attachment 6 – Guaranteed Analysis

1.6 Conflict of Terms

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

1. Appendix A, Standard Clauses for New York State Contracts;
2. This document;
3. Appendix C, Federal Emergency Management Agency Term and Conditions
4. Appendix B, General Specifications
5. Attachment 1 – Pricing;
6. Attachment 2 – Delivery Schedule – State Agencies;
7. Attachment 3 – Delivery Schedule – Non-State Agencies;
8. Attachment 4 – Insurance Requirements;

- 9. Attachment 5 – Report of Contract Usage
- 10. Attachment 6 – Guaranteed Analysis

1.7 NYS Comptroller Approval

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

2. SPECIFICATIONS

2.1 Product Requirement

Contractor guarantees that the product(s) supplied will meet or exceed the minimum specifications listed in *Fuel Specifications*. All products provided shall be homogenous diesel fuel, suitable for diesel engines, and they shall conform to the requirements of ASTM D975, Table 1, or latest version thereof, except as listed differently herein, and ASTM D7467, or latest version thereof, for Biodiesel Blends (B6 to B20).

2.2 Guaranteed Analysis

Contractor’s Guaranteed Analysis is included as Attachment 6 – *Guaranteed Analysis*. If the Guaranteed Analysis exceeds specifications, it shall be the Contract standard.

2.3 Fuel Specifications

2.3.1 Fill and Vent Requirements

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

Agencies should also refer to CL-804, dated July 7, 2014, as they are responsible for the implementation of monitoring programs to ensure compliance by supplier with these specification requirements.

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

2.3.2 Topping Off Tanks

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

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

2.3.3 Trade Names

For the convenience of ordering, delivering, and servicing ULS diesel and biodiesel fuel under the Contract, Contractor shall identify the trade name for the diesel and biodiesel fuel offered under each type.. Such trade name, however, shall not in any way set aside the requirement of compliance with specifications.

2.3.4 Grade – Temperature Schedule

The Contractor will be responsible for delivery of straight 1D, straight 2D or straight Biodiesel, or any blend of 1D and 2D or Biodiesel as listed in the Solicitation specifications. **Agencies and Authorized Users desiring a mix other than normally required under these specifications must notify the Office of General Services and the Contractor in writing of the specific mix desired, and Contractor shall reply in writing regarding its agreement to provide the mix requested.** Also, unless the agency specified otherwise when ordering, the Contractor will adhere to the following schedule:

Grade/Mix	Temperatures	Costing Formula
#2D/Biodiesel	Spring/Summer/Early Fall* (above 20°F ambient). *Early Fall - used up to October	Current Contract Price
#1D	Winter (coldest areas) (subzero ambient to -40°F)	Current Contract Price
#2D/Biodiesel/1D	Winter Mix: See Low Temperature Operability/Performance Characteristics under Detailed Specifications section	Current Contract Price for respective gallon-age of each grade supplied

2.3.5 Sampling of Diesel Fuel Oil

Diesel fuel oil delivered shall be subject to sampling and testing at the discretion of the purchasing Agency and/or OGS Procurement Services. Normally, all samples collected for testing should be taken from delivery truck at the time of delivery.

The samples shall be collected in accordance with ASTM D4057, or latest revision thereof. The usual method of sampling is a three-way bottle/container sampling taken at an upper, middle, and a lower sample point from the delivery vehicle. The sample container is a normally closed stopper type and operator opens it at each point to obtain a proportional amount of the sample.

Product samples taken at the Agency’s dispensing pump shall be considered representative of a disputed diesel fuel oil delivery, when the Contractor has delivered one or more consecutive loads of fuel oil to the tank’s content which is in dispute.

Additionally, when the purchasing Agency’s documentation indicates that previously delivered diesel fuel oil is less than five percent of the tank’s diesel fuel oil volume following any disputed delivery, and the previously delivered diesel fuel oil performed and/or tested satisfactorily, then a sample taken from the pump shall be considered representative of the diesel fuel oil delivered.

2.3.6 Non-Complying Product – Delivery

Deliveries of diesel fuel oil may be sampled at the Contractor’s loading point or at the point of delivery by a representative of the Office of General Services, Procurement Services and/or the purchasing Agency’s personnel. The methods of sampling and testing will be as listed elsewhere herein.

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

When an inspection of the tank(s) after the removal of the sub-standard product indicates that the delivered product has rendered the tank(s) unsuitable for use, then the Contractor may be responsible for cleaning of the tank(s) so affected, if such cleaning is so instructed by the Office of General Services, Procurement Services.

The State may cancel the contract and may purchase the balance of the contract quantities in the open market at the Contractor's expense, if, in the opinion of the Commissioner of General Services, the fuel delivered fails to meet the specific requirements; or, if the fuel is found to contain objectionable dirt, water or excess sediment; and/or an excessively high cold filter plugging point.

2.3.7 Non-Complying Product – Delivery – Operability/Price Deduction

Deductions shown hereafter will be made from the invoice price, or subsequent agency invoices, for delivering diesel fuel oil that does not comply with the detailed specifications, whether or not the diesel fuel oil in question has been consumed by the purchasing Agency. These deductions shall be a flat rate per fill incident, adjusted for the number of non-complying delivery incidents at an individual tank.

Equipment shall be operable (regardless of weather conditions) when fueled from a delivery made within the last (preceding) thirty days. A deduction shall be assessed for each tank fill incident which causes inoperability of equipment using that delivered fuel. This inoperability deduction shall be in addition to the "Price Deduction" assessed for not complying to one (or more) of the Non-Complying Product characteristics stated hereinafter.

2.3.8 Non-Complying Product – Flash Point – Price Deduction

When the delivered diesel fuel oil's flash point is found to be greater than four (4°F) degrees Fahrenheit lower than the specified requirement, a deduction from the contracted invoice price shall be taken as stated in the "Price Deduction Table" found in this Contract.

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

When the delivered diesel fuel oil's water and sediment content is found to be greater than five hundredths (0.05%) of a percent above the specified requirement, a deduction from the contracted invoiced price shall be taken as stated in the "Price Deduction Table" found in this Contract.

2.3.10 Non-Complying Product – Viscosity – Price Deduction

When the delivered diesel fuel oil's viscosity is found to be greater than two (2) seconds above the specified maximum requirement, a deduction from the contracted invoiced price shall be taken as stated in the "Price Deduction Table" found in this Contract.

2.3.11 Non-Complying Product – Sulfur Content – Price Deduction

When the delivered diesel fuel oil's sulfur content is found to be greater than 0.0018%, a deduction from the contracted invoiced price shall be taken as stated in the "Price Deduction Table" found in this Contract.

If any delivered product is found to contain incorrect dye, then all diesel fuel in the tank shall be removed and replaced with an equal quantity of (as applicable, clear or red dyed, tax exempt) complying product.

The deduction shall be assessed regardless of whether the non-complying diesel fuel oil delivery is removed or not removed.

2.3.12 Non-Complying Product – Cetane Index – Price Deduction

When the delivered diesel fuel oil’s Cetane Index is found to be greater than two (2) cetane below the specified minimum requirement/s (i.e., 40 and/or 43.5), a deduction from the contracted invoiced price shall be taken as stated in the “Price Deduction Table” found in this Contract.

The deduction shall be applied to Calculated Cetane Index deficiencies and/or Engine Cetane Index deficiencies. The State may consider waiving these deductions (or adjusting them) if certified documentation of fuel quality is provided for fuel containing adequate additives. Certified documentation for fuel quality would be satisfied when the additive is certified in accordance with the regulations at 40 CFR 79 and is registered with the United States Environmental Protection Agency. The State reserves the right to require engine Cetane testing at the Contractor’s expense when calculated Cetane is lower than the specified Cetane Index.

2.3.13 Non-Complying Product – Ash Content – Price Deduction

When the delivered diesel fuel oil’s ash content is greater than fifteen thousandths of a percent (0.015%), a deduction from the contracted invoiced price shall be taken as stated in the “PRICE DEDUCTION TABLE” found in this Contract.

2.3.14 Non-Complying Product – Cold Filter Plugging Point (CFPP) Temperature – Price Deduction

When the delivered diesel fuel oil’s Cold Filter Plugging Point (CFPP) temperature is found to be greater than one (1°C) degree Centigrade above the specified maximum requirement for the respective delivery area and delivery period, a deduction from the contracted invoiced price shall be taken as stated in the “PRICE DEDUCTION TABLE” found in this Contract.

The deduction shall be assessed regardless of whether the non-complying diesel fuel oil delivery is removed or not removed and regardless of equipment operability. If equipment is not operable because of failure of the supplier/Contractor to adjust fuel and additive mix to ensure proper operation in a respective temperature period/zone, then a deduction shall be charged in addition to the preceding CFPP deduction and/or regardless of whether or not the preceding CFPP deduction is assessed.

2.3.15 Price Deduction Table

(NON-COMPLYING PRODUCT & OPERABILITY TABLE FOR PRICE DEDUCTIONS)				
Description of Non-Complying Characteristic	Limiting Value	Respective Amount of Deduction	Equipment Operability	Respective Amount of Deduction
<u>FLASH POINT</u> Type: #1D #2PD/1D&2D/1D #2D & 2PD	LESS THAN 116°F 118°F 121°F	1st incident charged at \$250.00 per tank fill*;	WHENEVER USE OF DELIVERED	1st incident charged at \$250.00 per tank fill*;
<u>WATER AND SEDIMENT</u>	greater than 0.07%			
<u>VISCOSITY (max)</u> SUS at 100°F: Type : #1D: #2D & 2PD	greater than 35 S 40 S	2nd incident charged at \$500.00 per tank fill*;	DIESEL FUEL	2nd incident charged at \$500.00 per tank fill*;
<u>SULFUR CONTENT</u> (.0018%, Max)	greater than 0.0018%		CAUSES	
<u>CETANE INDEX NO.</u> Calculated:	less than 40 CCI		EQUIPMENT	

Engine:	43.5 CI	Three or more incidences, charged at \$750.00 per tank fill*.	ENGINE(S)	Three or more incidences, charged at \$750.00 per tank fill*.
ASH, % mass 0.01% (max):	greater than 0.015%		TO <u>NOT</u>	
<u>COLD FILTER PLUGGING POINT</u> For OCTOBER Use For NOVEMBER Use For DECEMBER Use For JANUARY Use For FEBRUARY Use For MARCH Use	greater than **North/South -12°C/-10°C -17°C/-14°C -30°C/-23°C -33°C/-25°C -33°C/-24°C -25°C/-18°C		OPERATE (SHUTDOWN), DEDUCT THE FOLLOWING:	

* “Tank fill”, as used in this Table, shall be an individual (drop) fuel delivery into a purchasing facility’s fuel storage tank by the Contractor’s authorized delivery vehicle.

**“North/South”, as used in this Table, shall respectively designate the temperature limits for facilities which are located north of 42° latitude and others which are located south of 42° latitude.

2.3.16 Dye Marker Content

All product provided shall be free of visible evidence of the blue dye 1.4-diakylamino-anthraquinone. This requirement shall be in full compliance with Federal Clean Air Act, Part 80, Section 80.29 & State NYCRR, or latest revisions thereof.

EXCEPTION: Federally tax-exempt fuel may be dyed red using solvent red dye 164.

2.3.17 Flash Point

The specified minimum Flash Point for Fuel Oils provided under this contract shall be: 120°F for 1D; 122°F for 2PD/1D and 2D/1D (50/50 blend); and 125°F for 2D and 2PD. Delivered product having a flash point below the respective requirement given above, shall be adjusted in price as stated elsewhere herein for NON-COMPLYING PRODUCT. Delivered product having a flash point greater than ten (10°F) degrees Fahrenheit below the specified minimum shall be removed from the purchasing agency’s tank and replaced with product conforming to specifications. The Flash Point shall be determined using ASTM Test Method D93, or latest revision thereof, Flash Point by Pensky-Martens Closed Tester.

2.3.18 Water and Sediment

The intended Water & Sediment (W & S) content for Fuel Oils provided under this contract shall be two hundredths (0.02% V/V) of a percent.

Delivered product having a water & sediment content greater than five hundredths (0.05% V/V) of a percent shall be adjusted in price as stated elsewhere herein for NON-COMPLYING PRODUCT.

Delivered product having a water & sediment greater than five hundredths (0.05% V/V) of a percent shall be removed from the purchasing agency’s tank and replaced with product conforming to specifications, at purchasing agency’s discretion based on excessive filter maintenance and/or poor vehicle performance. The Water & Sediment content shall be determined using - ASTM Test Method D1796, or latest revision thereof. Product with W & S over 0.02% V/V but not over 0.05% V/V shall have additives ensuring smooth engine combustion and may be considered for this Contract. A haze rating @ 25°C (77F) shall be a maximum of 2 using ASTM Method D4176 or latest revision thereof.

2.3.19 Viscosity

The specified maximum Viscosity for Fuel Oils provided under this contract shall be: thirty-three (33 SUS @100°F) Saybolt Universal Seconds at one hundred degrees Fahrenheit, maximum, for 1-D fuel oil; and thirty eight (38 SUS @100°F) Saybolt Universal Seconds at one hundred degrees Fahrenheit, maximum, for 2-D and 2-PD fuel oils. Delivered product having a viscosity greater than 33 SUS @ 100°F or 38 SUS @ 100°F, respectively, shall be adjusted in price as stated elsewhere herein for NON-COMPLYING PRODUCT.

Delivered product having a viscosity greater than 35 SUS @ 100°F for 1-D; or 40 SUS @ 100°F for 2-D or 2-PD shall be removed from the purchasing agency’s tank and replaced with product conforming to specifications, at purchasing agency’s discretion based on excessive filter maintenance and/or poor vehicle performance. The viscosity shall be determined using ASTM Test Method D445, or latest revision thereof; and ASTM D2161-20, 1999e2, Conversion of Kinematic Viscosity to Saybolt Universal Seconds (Table 1), or latest revision thereof relative to the individual characteristics of the product being tested.

2.3.20 Cloud Point

The maximum cloud point temperature shall be equal to the tenth percentile minimum ambient temperature listed elsewhere herein under the heading LOW TEMPERATURE OPERABILITY PERFORMANCE. The maximum cloud point temperature for product, delivered from APRIL through the Summer use period, shall be thirty-one (31°F) degrees Fahrenheit [minus five tenths (-0.5°C) of a degree Centigrade]. The Cloud Point shall be determined using ASTM Test Method D2500-17a (IP #219/82), or latest revision thereof, in accordance with ASTM D975 procedures, or latest revision thereof

2.3.21 Cold Filter Plugging Point (CFPP)

The specified maximum CFPP for low temperature operability/performance of fuel oils provided under this contract shall be twenty-seven (27°F) degrees Fahrenheit [fifteen (15°C) degrees Centigrade] below the specified cloud point. The CFPP shall be determined using Institute of Petroleum Test Method IP #309/83, or latest revision thereof relative to the individual characteristics of the product being tested. This method is technically equivalent to the British Standard BS6188 and European Standard EN116.

Delivered product having a CFPP temperature greater than one (1°C) degree Centigrade above the maximum but less than seven and one-half (7.5°C) degrees Centigrade above the maximum shall be adjusted in price as stated elsewhere herein for NON-COMPLYING PRODUCT. Delivered product having a CFPP temperature of seven and one-half (7.5°C) degrees Centigrade, or greater, above the maximum shall be removed from the site upon the State’s request and the Contractor shall pay a price penalty as stated elsewhere herein regardless of whether the fuel oil delivery is removed or not removed. Respective CFPP temperatures shall be listed elsewhere herein.

2.3.22 Sulfur

The specified maximum Sulfur content for Fuel Oils provided under this contract shall be fifteen ten thousandths of a percent, per table which follows. Delivered product having sulfur content greater than fifteen ten thousandths of a percent (.0015%) shall be adjusted in price as stated elsewhere herein for NON-COMPLYING PRODUCT. Delivered product having a sulfur content greater than that allowed by NYCRR, Title 6 Environmental Conservation Law, Chapter III Air Resources, Subchapter A, Subpart 225-1.2.(d) Table 2 shall be removed from the purchasing agency’s tank and replaced with product conforming to specifications. The Sulfur content shall be determined using ASTM D2622, or ASTM D4294; or latest revisions thereof relative to the individual characteristics of the product being tested.

SUMMARY OF SULFUR CONTENT (REQUIREMENTS):

Geographical Area of the State	Percent of Sulfur by Weight (Maximum)
--------------------------------	---------------------------------------

Statewide Highway Vehicles: 0.0015% (fifteen ten thousandths of a percent).

2.3.23 Type of Use Requirements

Effective October 15, 2006, the maximum sulfur content shall be .0015% (fifteen ten thousandths of a percent) for all diesel fuel used in highway vehicle motors. This shall apply to all highway vehicles (diesel engine) Statewide. All off-highway equipment motors shall comply with the prior geographical area requirements for sulfur content, or engine manufacturer’s recommendation whichever is stricter.

2.3.24 Cetane Rating

The specified minimum cetane value for Diesel Fuel Oils provided under this contract shall be a forty-two (42.0 CCI) Calculated Cetane Index. Delivered product having a calculated cetane index below forty-two (42.0) CCI shall be adjusted in price as stated elsewhere herein for NON-COMPLYING PRODUCT.

Delivered product having a calculated cetane index below forty (40.0) CCI shall be removed from the purchasing agency’s tank and replaced with product conforming to specifications. The Calculated Cetane Index value shall be determined using ASTM Test Method D976-06-2016 (IP #364/84), or latest revision thereof; or ASTM D4737, or latest revision thereof; relative to the individual characteristics of the product being tested.

When a given sample is determined to be in non-compliance of either or both (Calculated & Engine) Cetane Index requirements, then the greater deviation shall be the figure used for the price deduction requirements; except when the Engine Cetane Index exceeds its specified requirement, the “Non-Complying Product - Cetane Content/Price Deduction” shall be waived.

2.3.25 Ash

The specified maximum ASH content for Fuel Oils provided under this contract shall be one hundredth (0.01%) of a percent, maximum by weight. Additionally, a product having excessive ash content shall be removed and/or adjusted in price as specified elsewhere herein. The Ash content shall be determined using ASTM Test Method D482 (IP #4/81), or latest revisions thereof - relative to the individual characteristics of the product being tested.

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

2.3.26 Diesel Fuel Oil Requirements

The diesel fuel oil supplied under this contract shall meet the universal details listed previously, the seasonal and other listed requirements which follow:

The diesel fuel oil supplied shall be visually free of undissolved water, sediment, suspended matter, and shall be clear & bright at the ambient temperature, or seventy (70°F) degrees Fahrenheit, whichever is higher. Diesel Fuel oil supplied shall NOT contain any alcohol.

The winter mix diesel fuel oil, regular, premium, and Biodiesel supplied shall meet their respective requirements as listed elsewhere herein. In addition, these grades of fuel oil shall conform to the “LOW TEMPERATURE OPERABILITY PERFORMANCE” requirements listed later herein.

2.3.27 Grade 2D (2-D) Diesel (Regular) Fuel Oil

Grade 2D fuel oil shall meet specifications listed previously herein & it shall be suitable for use in spring/summer/fall climate conditions.

2.3.28 Grade 1D (1-D) Diesel Fuel Oil

The Grade 1D fuel oil shall meet the specifications listed previously herein and it shall be suitable for use during winter (sub-zero) climate conditions. Kerosene (1- K) meeting and/or exceeding the parameters stated herein for 1D will be considered in lieu of 1D as part of this specification/Contract.

2.3.29 Grade 2D/1D Winter Mix (Regular Diesel/Kerosene) Diesel Fuel Oil

The Grade 2D/1D Winter Mix Diesel Fuel Oil shall meet the specifications listed in the *Fuel Specifications* section, and it shall be suitable for use during winter (purchasing Agency’s local ambient temperature) climate conditions.

It shall be proportioned to provide a cloud point equal to the tenth (10th) percentile minimum ambient temperature expected for the region and period of use.

For New York State Department of Transportation (DOT) sites, the DOT has the discretion to mandate the percentages of 1D and 2D used in the winter mix to be provided.

2.3.30 Grade 2PD/1D Winter Mix (Premium Diesel/Kerosene) Diesel Fuel Oil

The Winter Mix Premium Grade Diesel Fuel Oil shall be a homogenous mixture of the base diesel fuel oils (1D & 2PD) and specific purpose additives formulated to improve overall product performance. The additives shall be comparable to those stated for 2PD in section 2.3.31 in this Contract.

2.3.31 Grade 2PD (Premium) Diesel Fuel Oil

The Premium Grade Diesel Fuel Oil shall be a homogenous mixture of 2D base diesel fuel oil and specific purpose additives formulated to improve overall product performance. The additives are as follows:

Detergents - shall be included to remove gum and/or varnish build-up on fuel system components. They shall carry removed substances to the fuel filter where the substances are separated from the product. At the injectors they shall dissolve and remove combustion deposits from the orifice tip, maintaining required spray patterns for proper combustion. Detergents shall meet the parameters of CRC L-10 Superior Maximum Demerit Rating requirements (10 max.)

Corrosion/Rust Inhibitors - shall be included to prevent the rusting and/or corroding of the cleansed surfaces in the fuel system. The presence of the required corrosion inhibitors in the fuel oil shall be determined using NACE (National Association of Corrosion Engineers) standard test method number TM0172-01. This method is an “A” - spindle test having a grading range from “A” through “E”; “A” indicating no corrosion and “E” indicating extreme corrosion. The Premium Diesel Fuel Oil supplied shall have a rating of B5++0, or better, when tested by this method.

Stabilizer - shall inhibit oxidation of the fuel oil, reducing darkening & sludge formation in the fuel oil as it ages (during prolonged storage periods). The presence of the required stabilizer (degradation inhibitors) in the fuel

oil shall be determined using Dupont's standard test method number F21-61. This method is a thermally accelerated degradation process which measures stability based on substance accumulation on a ten micron filter which is compared to a standardized chart. The Premium Diesel Fuel Oil supplied shall have a rating of seven (7), or lower, when tested by this method.

De-hazer - shall remove any traces of moisture that might be suspended in the fuel oil mixture and/or any ambient moisture which might condense in the product. It shall disperse/separate such moisture (water) from the fuel and result in fuel oil clarity.

Visual Indicator - should be included in all premium diesel fuel oil. The indicator shall be a fluorescent dye which is clearly distinguishable from the standard base fuel oil's color with the use of a black light, etc. Red dye - visible (daylight) to the naked eye indicates Federal Tax Exempt.

Premium grade diesel fuel oil which does not conform to the stabilizer, corrosion ratings specified herein shall be removed or an adequate additive shall be provided. The NYS Chief Procurement Officer's decision to remove or accept corrective additive amounts (provided & intermixed at the Contractor's cost & expense) to the fuel oils in question shall be final.

2.3.32 Premium Cetane Rating

The premium diesel (Grade 2PD & 2PD/1D [Winter Mix]) fuel oil shall contain the respective (specified) combination of the base fuel oil(s) (1D & 2D) and it shall meet all the specifications listed elsewhere herein for those base fuel oils.

In addition to its base fuel oil meeting the Calculated Cetane Index value specified previously herein for all the fuel oils. The premium fuel oil shall have a total (calculated plus cetane improvers) Cetane Index value of forty-five and one-half (45.5) Cetane. ASTM Test Method D976-21e1 (IP #364/84), or latest revision thereof; or ASTM D4737, or latest revision thereof, shall be used for calculating whether the Cetane number is 45.5. However, the premium grade diesel fuel oil's Cetane Index value shall be determined using (the engine ignition method) ASTM Test Method D613-18ae1 (IP #41/81), or latest revision thereof, when the previously specified calculated method for cetane of the base fuel oil is less than a 45.5 cetane value.

The premium fuel oil shall conform to the specified Cetane Index listed herein, both Calculated Cetane Index and Engine Cetane Index (D613-18ae1). When a given sample is determined to be in non-compliance of either or both Cetane Index requirements, then the greater deviation shall be the figure used for the price deduction requirements; except when the Engine Cetane Index exceeds its specified requirement, the "Inferior Cetane Content/Price Deduction" shall be waived.

2.3.33 Cetane Improver

At the manufacturer's recommended full-strength dosage ratio, this additive shall include a 2-ethyl-hexyl-nitrate cetane improver which shall increase the cetane value of the fuel by a minimum of four (4) numbers (i.e., a 42.0 cetane fuel shall raise to a cetane of 46.0, or better). A minimum of thirty (30%) percent of the additive package shall be cetane improver.

2.3.34 Cold Filter Flow Improver

At the manufacturer's recommended full-strength dosage ratio, this additive shall include a cold filter flow improver which shall provide a maximum fuel oil CFPP temperature which is eighteen (18°F) degrees Fahrenheit [ten (10°C) degrees Centigrade] below the respective Cloud Point temperatures listed elsewhere herein under the heading "LOW TEMPERATURE OPERABILITY/PERFORMANCE CHARACTERISTICS."

Winter Mix delivered for use during the months of November through March shall have a cold filter flow improver as specified herein.

2.3.35 Detergent

This additive shall possess detergent characteristics. It shall meet the parameters of CRC L-10 Superior Maximum Demerit Rating requirements (10 max.) and it shall pass a verifiable, objective dynamometer test which proves keep-clean or clean-up ability relative to untreated fuel oil. The Mercedes Benz OM-616 Coker Test, or comparable test, shall be acceptable for proof of performance.

2.3.36 Corrosion Inhibitors

At the manufacturer’s recommended full-strength dosage ratio, this additive shall possess corrosion inhibitors which shall ensure a B⁺⁺, or better, NACE rating (steel spindle test).

2.3.37 Water Dispersal

This additive shall provide water dispersant characteristics which neither: completely shed water, nor completely emulsify the water. It shall emulsify water in the fuel oil being treated at a controlled rate of one hundred (100 gal) gallons, maximum, per million gallons of fuel being treated.

2.3.38 Deicing Capability

At the manufacturer’s recommended full-strength dosage ratio, this additive shall provide adequate deicing capability.

2.3.39 Additive Reference (Winter Mix, CFPP Improver)

Any additive supplied under this contract shall be: AGA/Truck-Pro (Carter Chem.) product named “Artic Arnol”, or NALCO Chemical Co. product code number “88BK108 Liquid”, or comparable product; meeting the minimum requirements of this specification.

2.3.40 Requirements Summary

PARAMETER	TEST METHOD	1D FUEL OIL	2D FUEL OIL	2PD FUEL OIL
Flash Point, min.	D93	120 °F	125 °F	125 °F
Water & Sed., max.	D1796	0.02% V/V	0.02% V/V	0.02% V/V
Water & Sed., Haze Rating, max.	D4176	2.0	2.0	2.0
Viscosity, max.	D445/D2161-20	33SUS@100 °F	38SUS@100 °F	38SUS@100 °F
Ash, % mass, max.	D482	0.01	0.01	0.01
Sulfur, % mass, max.	D2622 or D4294	0.0015%	0.0015%	0.0015%
Cetane Index (calculated)	D976-06-2016 (IP 364/84) D4737	42.0 (min.)	42.0 (min.)	42.0 (min.)
Cetane Number (engine)	D613-17ce1	42.0 (min.)	42.0 (min.)	45.5 (min.)

Aromaticity, % vol., possible min.	D1319-15	-----	27.0	27.0
Aromaticity, % vol., possible max.		35.0	35.0	35.0
Cloud Point, °C, max.	D3117-03 D2500-17a	Same as Ambient Temp, October through March		
Cloud Point, °C, min.	IP309/83	See Low Temperature Operability Table		
Carbon Residue (mass %), max., on 10% Ramsbottom	D524-15	0.15	0.35	0.35
Corrosion Inhibitors	TM0172, NACE	Mfr's std.	Mfr's std.	B5++0 or better
Stabilizer	F21-61, Dupont	Mfr's std.	Mfr's std.	"7" or less

2.3.41 Blending/Delivery Requirements

All fuel oil delivered which contains combinations of 1D, 2D, or winterizing additives shall be blended at the bulk plant, or via a dual/multiple manifold on the truck which mixes them for a simultaneous delivery. Delivery/ies via a non-manifold type truck (i.e., product which is not premixed) should not be accepted.

Cetane and cold filter plugging point (CFPP) parameters shall be met regardless of product mix.

2.3.42 Low Temperature Operability/Performance Characteristics

The WINTER MIX (2D/1D) and premium diesel, 2PD/1D (WINTER MIX), fuel oil deliveries shall conform to the cloud point and cold filter plugging point temperatures within this section and shall ensure that the maximum percentage of 2D fuel is included in the mix relative to those maximum temperature points. The percentage of 1-D fuel oil used to ensure the proper CFPP temperature shall not exceed fifty (50%) percent of the base oils mix ratio. When necessary to ensure compliance with low temperature characteristics, the use of winterizing additives which meet the conditions stated elsewhere herein shall be required. Cummins states that their engines need a fuel with 60% (minimum) #2 diesel content for Winter Mix.

The fuel oils shall meet the following respective low temperature operability/performance characteristics when tested in accordance with ASTM D975, or latest version thereof, and the test methods listed herein under the heading "UNIVERSAL DETAILS".

WINTER MIX PERFORMANCE PERIODS	AMBIENT TEMPERATURE and	CFPP TEMPERATURE
	CLOUD POINT (maximum)	(maximum)
	42°LAT/North - South 42°LAT	42°LAT/North - South 42°LAT

Deliveries	OCTOBER	+26°F(- 3°C) +31°F(-0.6°C)	+ 8°F(-13°C) +13°F(-11°C)
with Next	NOVEMBER	+17°F(- 8°C) +23°F(- 5°C)	- 1°F(-18°C) + 5°F(-15°C)
Scheduled	DECEMBER	- 2°F(-19°C) + 7°F(-14°C)	-24°F(-31°C) -11°F(-24°C)
Replenish-	JANUARY	-2°F(-19°C) + 3°F(-16°C)	-29°F(-34°C) -15°F(-26°C)
ment	FEBRUARY	-2°F(-19°C) + 5°F(-15°C)	-29°F(-34°C) -13°F(-25°C)
In	MARCH	+ 3°F(-16°C) +16°F(- 9°C)	-15°F(-26°C) - 2°F(-19°C)
Delivery In All Other Periods		+26°F(- 3°C) +31°F(-0.6°C)	+ 13°F(-11°C) +13°F(-11°C)

WINTER MIXES: In regard to NYS DOT sites, the regional equipment manager (transportation motor equipment manager) has the discretion to mandate the winter mixes that will exceed the chart above for cloud point at individual sites.

NOTE: When the National Weather Service projects extended cold periods with ambient temperatures significantly lower than those listed above or a particular locale frequently/usually has lower ambient temperatures, then the oil supplied relative to those deliveries shall have the maximum cloud & cold filter plugging point temperatures lowered to meet actual low ambient operability requirements.

2.4 Biodiesel Fuel Specifications

2.4.1 Biodiesel Usage Considerations

There are many positive benefits attributed to the use of B5, and B10 Biodiesel fuel as compared to normal "petro diesel" fuel. The most mentioned are decreased emissions of various pollutants, increased engine life, reduced reliance on uncertain petro fuel sources, renewable fuel source and safety in handling. However, there are also a number of properties of Biodiesel fuel that potentially impact on equipment, storage and OEM warranty coverage. These considerations are detailed below.

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

Sediment: Use of 2D Diesel fuel can leave a deposit in the bottom of fueling lines, tanks, and delivery systems over time. The use of Biodiesel can dissolve this sediment and result in the need to change filters more frequently when first using Biodiesel until the whole system has been cleaned of the deposits left by the petro diesel.

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

Spontaneous Combustion: Biodiesel is made from vegetable oils and/or animal fats which can oxidize and degrade over time. The oxidizing process can produce heat. In certain environments a pile of oil-

soaked rags can become hot enough to result in a spontaneous fire. Biodiesel soaked rags should be stored in a safety can or dried individually to avoid the potential for spontaneous combustion.

Storage: All fuels have a shelf life. This is also true with Biodiesel and Biodiesel blends. Available data indicates that B5, and B10 Biodiesel fuel should be used within six months of manufacture. Fuels determined to have a Total Acid Number (by ASTM D664-18e2 or latest version thereof) of greater than 0.25KOH/g are not recommended for use.

OEM Considerations: The impact of Biodiesel use on warranty coverage varies by vehicle/engine manufacturer. Major engine manufacturers have all issued statements regarding the use of Biodiesel fuel as it pertains to their warranty coverage. BEFORE deciding to use B5, and B10 fuel, prospective users should make sure they have checked with the manufacturers of their diesel equipment for considerations and concerns related to that usage. Copies of the major manufacturers’ statements regarding warranty impact of using Biodiesel may be obtained from the National Biodiesel Board at (800) 841-5849.

2.4.2 Dye Marker Content

All products provided shall be free of visible evidence of the blue dye 1.4-diakylamino-anthraquinone. This requirement shall be in full compliance with Federal CCA*, Part 80, Section 80.29 & State NYCRR, or latest revisions thereof. EXCEPTION: Federally tax-exempt fuel may be dyed red using solvent red dye 164.

2.4.3 Finished Fuel Requirements

MATERIAL: The finished B5, and B10 Biodiesel fuel blends shall be prepared using the following feedstocks:

1D Light Distillate Diesel Fuel: As described above and meeting the requirements listed under the Diesel Fuel feedstock portion this spec and as listed in the Requirements Summary table.

2D Middle Distillate Diesel Fuel: As described above and meeting the requirements listed under the Diesel Fuel feedstock portion this spec and as listed in the Requirements Summary table.

Biodiesel (B100) Fuel: Biodiesel fuel composed of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats and meeting the requirements of ASTM D6751, or latest version thereof, "Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels".

2.4.4 Workmanship

The finished B5, or B10 Biodiesel fuel blend shall be visually free from undissolved water, sediment, and suspended matter. It shall be clear and bright when tested in accordance with ASTM D4176, or latest version thereof, procedure 1 or 2.

2.4.5 Physical and Chemical Requirements (Table)

The Biodiesel portion of the finished B5, or B10 Biodiesel fuel blends shall be 5% or 10% respectively by volume of B100 Biodiesel fuel with a tolerance of +/-1%. Remaining 95% or 90% of the final blend shall be composed of 1D and 2D Diesel fuel in proportions as necessary to produce an end product meeting the requirements listed in the Physical and Chemical Requirements Table below:

PARAMETER	TEST METHOD	B5/B10 BIODIESEL FUEL
Flash Point, min.:	D93-20	125°F

Water & Sed., max.:	D2709-16	0.05% V/V
Water & Sed., Haze Rating, max.:	D4176-04 (2019)	2.0
Viscosity, max.:	D445-19/D2161-17	38SUS@100°F
Ash, %mass, Max.	D482-19	0.01
Sulfur, % mass, max.:	D2622-16 or D4294-16e1	0.0015%
Cetane Index (Calculated)	D4737-10(2016)a	42.0 (min.)
Cetane Number (Engine)	D613-18a	42.0 (min.)
Aromaticity, % vol., Max.	D1319 – 19	28.0
Cloud Point, °C max.	D2500-17a	As shown in the "Low Temperature Operability" Table
CFPP Point, °C,	IP309	As shown in the "Low Temperature Operability" Table
Carbon Residue (mass %), max, on 10% Ramsbottom:	D524-15 (2019)	0.35
Total Acid Number (TAN), mg KOH/g, maximum	D664-18e2	0.25
Corrosion Inhibitors	TM0172-2001, NACE	Mfr's std.
Stabilizer	F-21, Dupont Thermal Stability	Mfr's std.

2.4.6 Flashpoint

Delivered product having a flash point below the respective requirement given in Physical and Chemical Requirements Table shall be adjusted in price as detailed in the NON-COMPLYING PRODUCT & OPERABILITY TABLE FOR PRICE DEDUCTIONS.

Delivered product having a flash point greater than ten (10°F) degrees Fahrenheit below the specified minimum shall be removed from the purchasing agency's tank and replaced with product conforming to specifications.

2.4.7 Water and Sediment

Delivered product having a water & sediment content greater than five hundredths (0.05% V/V) of a percent shall be adjusted in price as detailed in the NON-COMPLYING PRODUCT & OPERABILITY TABLE FOR PRICE DEDUCTIONS.

Delivered product having a water & sediment greater than seven hundredths (0.07% V/V) of a percent shall be removed from the purchasing agency's tank and replaced with product conforming to specifications, at purchasing agency's discretion based on excessive filter maintenance and/or poor vehicle performance.

2.4.8 Viscosity

The specified maximum Viscosity for Fuel Oils provided under this contract shall be thirty-eight (38 SUS @100°F) Saybolt Universal Seconds. Delivered product having a viscosity greater than 38 SUS @ 100°F, respectively, shall be adjusted in price as detailed in the NON-COMPLYING PRODUCT & OPERABILITY TABLE FOR PRICE DEDUCTIONS.

Delivered product having a viscosity greater than 40 SUS @ 100°F shall be removed from the purchasing agency's tank and replaced with product conforming to specifications, at purchasing agency's discretion based on excessive filter maintenance and/or poor vehicle performance.

2.4.9 Cloud Point

Various delivery periods are shown in the LOW TEMPERATURE OPERABILITY TABLE. The cloud point temperature of the material supplied for these various delivery periods shall be no greater than the tenth percentile minimum ambient temperature as listed in the LOW TEMPERATURE OPERABILITY TABLE for the latitudes shown in that table.

2.4.10 Cold Filter Plugging Point (CFPP)

Various delivery periods are shown in the LOW TEMPERATURE OPERABILITY TABLE. The CFPP of the material supplied for these various delivery periods shall be no greater than the values listed in the LOW TEMPERATURE OPERABILITY TABLE for the latitudes shown in that table.

Delivered product having a CFPP temperature greater than one (1°C) degree Centigrade above the maximum but less than seven and one-half (7.5°C) degrees Centigrade above the maximum shall be adjusted in price as detailed in the NON-COMPLYING PRODUCT & OPERABILITY TABLE FOR PRICE DEDUCTIONS.

Delivered product having a CFPP temperature of seven and one-half (7.5°C) degrees Centigrade, or greater, above the maximum shall be removed from the site upon the State's request and the Contractor shall pay a price deduction as detailed in the NON-COMPLYING PRODUCT & OPERABILITY TABLE FOR PRICE DEDUCTIONS regardless of whether the fuel oil delivery is removed or not removed. Respective CFPP temperatures shall be listed elsewhere herein.

2.4.11 Sulfur

The specified maximum Sulfur content for Diesel Fuel Oils provided under this contract shall be fifteen ten thousandths of a percent. Delivered product having a sulfur content greater than fifteen ten thousandths of a percent (0.0015%) shall be adjusted in price as detailed in the NON-COMPLYING PRODUCT & OPERABILITY TABLE FOR PRICE DEDUCTIONS. Delivered product having a sulfur content greater than that allowed by NYCRR, Title 6 Environmental Conservation Law, Chapter III Air Resources, Subchapter A, Subpart 225-1.2.(d) Table 2 shall be removed from the purchasing agency's tank and replaced with product conforming to specifications.

2.4.12 Cetane Rating

The specified minimum cetane value for Diesel Fuel Oils provided under this contract shall be a forty-two (42.0 CCI) Calculated Cetane Index. Delivered product having a calculated cetane index below forty two (42.0) CCI shall be adjusted in price as detailed in the NON-COMPLYING PRODUCT & OPERABILITY TABLE FOR PRICE DEDUCTIONS.

Delivered product having a calculated cetane index below forty (40.0) CCI shall be removed from the purchasing agency's tank and replaced with product conforming to specifications.

When a given sample is determined to be in non-compliance of either or both (Calculated & Engine) Cetane Index requirements, then the greater deviation shall be the figure used for the price deduction requirements; except when the Engine Cetane Index exceeds its specified requirement, the "Non-Complying Product - Cetane Content/Price Deduction" shall be waived.

2.4.13 Ash

The specified maximum ASH content for Diesel Fuel Oils provided under this contract shall be one hundredth (0.01%) of a percent, maximum by weight. Delivered product having an ash content greater than two thousandths (0.002%) of a percent above the maximum but less than one tenth (0.010%) of a percent above the maximum shall be adjusted in price as detailed in the NON-COMPLYING PRODUCT & OPERABILITY TABLE FOR PRICE DEDUCTIONS. Delivered product having an ash content of one tenth (0.010%) of a

percent or greater above the maximum specified shall be removed from the site upon the State’s request and the Contractor shall pay a price deduction as detailed in the NON-COMPLYING PRODUCT & OPERABILITY TABLE FOR PRICE DEDUCTIONS.

2.4.14 Low Temperature Operability Table

Shall be the same as listed elsewhere herein for Standard Petroleum Diesel Fuel.

NOTE: When the National Weather Service projects extended cold periods with ambient temperatures significantly lower than those listed in the "Low Temperature Operability Table" or a particular locale frequently/usually has lower ambient temperatures, then the oil supplied relative to those deliveries shall have the maximum cloud and cold filter plugging point temperatures lowered to meet actual low ambient operability requirements.

2.4.15 Non-Complying Product & Operability Table For Price Deductions

Shall be the same as indicated under "General Information" herein.

2.4.16 Feedstock Diesel Fuel Oil Requirements

The Diesel fuels used as feedstocks in the manufacture of B5, or B10 Biodiesel fuel shall meet or exceed the requirements of ASTM D975, or latest version thereof, and the requirements listed below and in the Requirements Summary table below before being blended to produce the B5, or B10 Biodiesel end product.

2.4.17 Workmanship

Fuel shall be visually free from undissolved water, sediment, and suspended matter. It shall be clear and bright when tested in accordance with ASTM D4176, procedure 1 or 2, or latest version thereof. Fuel oil shall NOT contain any alcohol.

2.4.18 2D Diesel (Regular) Fuel Oil

Grade 2D fuel oil shall meet the specifications listed in the Requirements Summary table below.

2.4.19 1D Diesel Fuel Oil

The Grade 1D fuel oil shall meet the specifications listed in the Requirements Summary table below. Kerosene (1- K) meeting and/or exceeding the parameters stated herein for 1D will be considered in lieu of 1D as part of this specification/Contract.

2.4.20 Requirements Summary (Table)

Except for Water & Sed., max., shall be same as listed under "Requirements Summary" elsewhere herein for "Standard Petroleum Diesel Fuel".

PARAMETER	TEST METHOD	1D Diesel Fuel	2D Diesel Fuel
Water & Sed., max.:	D2709-16	0.02% V/V	0.02% V/V

3. CONTRACT TERMS AND CONDITIONS

3.1 Performance and Bid Bonds

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

3.2 Supplier/Manufacturer's Certificate

Contractor's submission of the Supplier's letter or certification from the refiner or distributor in response to the Solicitation guarantees that the Contractor is an authorized dealer or distributor, and has agreed to supply the Contractor with all quantities of Products required by the Contractor in fulfillment of its obligation under this Contract. The Commissioner reserves the right to investigate or make any inquiry into the capabilities of the Contractor to properly perform under this Contract.

3.3 Investigation

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

3.4 Contract Term and Extensions

The Contract will be in effect for a term of approximately one year, ending August 22, 2024. The Contract term shall commence after all necessary approvals or August 25, 2023 (the later of the two) and shall become effective upon the date of OSC approval of the final executed documents.

All OGS Centralized Contracts resulting from the Solicitation shall have a co-terminus end date. At the State's option, the Contract may be extended for One (1) additional year, in increments as deemed to be in the best interest of the State. Whether the optional extensions is 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*.

3.5 Short term Extension

This section shall apply in addition to any rights set forth in Appendix B, *Contract Term – Extension*. In the event a replacement Contract has not been issued, any Contract let and awarded hereunder by the State may be extended unilaterally by the State for an additional period of up to three (3) months upon notice to the Contractor with the same terms and conditions as the original Contract and any approved modifications. With the concurrence of the Contractor, the extension may be for a period of up to six (6) months. However, this extension automatically terminates should a replacement Contract be issued in the interim.

3.6 Price

Contract pricing is set forth in Attachment 1 – Pricing.

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

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

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

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

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

It shall be the Contractor's responsibility to satisfy Authorized User requirements by furnishing blended product when called for during the time period indicated in the Solicitation and Contract. Any special allowances were not included in the price as they could not be considered in evaluating bids. However, if the Contractor extends such allowances during the term of the contract to Federal, State, Local Governments or to commercial users in the normal course of doing business, New York State requires that such allowances will also be available to the State in the maximum amount extended to others who contract to purchase fuel oil under similar contractual terms and conditions.

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

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

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

The price shall include all applicable Federal, State, Local taxes and duties as stated in Appendix B, clause 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 diesel 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 diesel 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 Contractor shall promptly notify the Procurement Services Contract Management Specialist of all matters relating to any excise tax or duty that reasonably may be expected to result in either an increase or decrease in the Contract price for fuel thirty days (30) prior to adding to invoices.

3.7 OPIS Posting Locations

OPIS Posting Locations have been established for all counties for purposes of this Contract. Contractor's pricing will be based on the posted price in *Oil Price Daily* for ULS Diesel and Kerosene in the OPIS Posting Locations identified below:

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

*Newark, NJ posting location is utilized for the Kerosene low price for the Long Island posting location.

3.7.1 Location Change or Substitution

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

3.7.2 Calculation Change or Substitution

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

3.7.3 Product Change or Substitution

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

3.8 Price Adjustments/Revisions

Contract prices shall be firm except that price revisions will be permitted in accordance with the following procedure:

Price revisions (increases or decreases) to the original Contract price shall be based on prices in OPIS's *Oil Price Daily* for Kerosene and ULS Diesel, under the heading, "Daily Petroleum Prices", Rack prices only, which are designated for ultra-low sulfur products. 1D and 2D Prices will fluctuate according to the "Ultra-Low Sulfur Kerosene" and "Ultra-Low Sulfur Diesel" postings selected. The terms "Posting Day" or "Posted Price" as used throughout the Solicitation and resulting Contract refers to the actual day the prices are posted.

The low price shown in OPIS's *Oil Price Daily* postings will be used to compute price revisions during the Contract period. Procurement Services will compute any price revisions by determining the difference between the Posted Price on February 23, 2023 and the Posted Price on every Thursday during the contract period,

beginning with the OPIS *Oil Price Daily* on the Thursday immediately preceding the Contract start date. The differential between these two (2) prices will be added or subtracted to the bid price per gallon, yielding the new weekly price. If the Contract award is made in a subsequent week after August 24, 2023, then the posted price on the last business day in the preceding week will be used.

The aforementioned mechanism for weekly price revisions would then be applied to the Contract prices throughout the Contract period. Price revisions will be calculated by truncating all figures (priced in dollars per gallon) to four (4) decimal places. Applicable price changes will be effective as of the start of business on the following Friday. If the prices are not posted by OPIS on Thursday, the previous business day on which the specified prices are posted will be utilized. The published prices on February 23, 2023 for 1D (ultra-low sulfur Kerosene) and 2D (ultra-low sulfur Diesel) are shown in the table below, by posting location. Calculated base prices for B5, and B10 Biodiesel are also shown below.

Soybean oil prices published on February 17, 2023 in the USDA AMS 3511 report for the Illinois region

Low Soy Price (Cents per lb)	High Soy Price (Cents per lb)	Simple Average (Cents per lb)	Simple Average (\$ per gallon)
63.5100	64.5100	64.0100	\$4.8945

Posting Location	KEROSENE (1D) (\$ per gal)	ULS DIESEL (2D) (\$ per gal)	Soy Price, Simple Average (\$ per gal)	B5 Biodiesel (\$ per gal)	B10 Biodiesel (\$ per gal)
Albany, NY	\$3.3233	\$2.8250	\$4.8945	\$2.9284	\$3.0319
Newburgh, NY	\$3.9450	\$2.8532	\$4.8945	\$2.9552	\$3.0572
Utica, NY	\$3.6075	\$2.8226	\$4.8945	\$2.9261	\$3.0297

Should the weekly price revision cycle not provide adequate price adjustments, because of rapid changes in worldwide petroleum prices, the State reserves the right to increase the frequency of the price revisions to a basis that best reflects market conditions. A possible basis could utilize postings Monday’s Daily OPIS publication for Tuesday through Thursday prices and weekend prices would continue with Thursday’s OPIS Daily publication for Friday through Monday. Also, refer to “NOTE” concerning “Posting Day” below.

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

NOTE: In the event a specified Rack low price is not posted on a Thursday, then a price posted on a previous business day in which a posted price is available in OPIS’s publication will be utilized. In the event Thursday (the day Oil Price Daily posted prices are used for price adjustments) falls as a Holiday, the State will utilize the previous business day’s OPIS publication for posted prices for the weekly period.

Price increases are limited to changes in the OPIS Posting Location as noted above. Increases in Contract costs or prices to compensate for other increases in the cost of doing business, regardless of the cause or nature of such costs of the Contractor, will not be allowed during the Contract period.

Price adjustments will continue using the same method if the Contract is extended or renewed.

3.8.1 Price Revisions for Biodiesel

The price revision procedure for 1D to be used for winter mixes with B5 Biodiesel, and B10 Biodiesel shall be the same as described above in "Price Revisions" and "NOTE". The price revision procedure for B5, and B10 Biodiesel will be as follows:

The B5 Biodiesel pricing shall be based on 95% of the low posted price for low sulfur diesel (as described above) plus 5% of the soybean oil price based on the simple average of the high and low asking price for soybean oil found in the USDA AMS 3511 report for the Illinois region published on the immediately preceding Friday, with the price converted from cents per pound to dollars per gallon by applying a multiplication factor of 0.076465 to the average and truncating the result to four decimal places.

The B10 Biodiesel pricing shall be based on 90% of the low posted price for low sulfur diesel (as described above) plus 10% of the soybean oil price based on the simple average of the high and low asking price for soybean oil found in the USDA AMS 3511 report for the Illinois region published on the immediately preceding Friday, with the price converted from cents per pound to dollars per gallon by applying a multiplication factor of 0.076465 to the average and truncating the result to four decimal places.

Procurement Services will compute any price revisions by determining the difference between the combined posted prices on Thursday, February 23, 2023 and the combined posted prices on every Thursday during the Contract period, beginning with the OPIS *Oil Price Daily* on the Thursday immediately preceding the contract start date. Applicable price changes will be effective as of the start of business on the following Friday. If the prices are not posted on Thursday, the previous business day on which the specified prices are posted will be utilized.

The following is an example of B5, and B10 Biodiesel Price Revisions utilizing pricing from the Albany OPIS Posting Location. All values will be truncated to four (4) decimal places (dollars per gallon) prior to every operation in calculating the final result. The final result will also be truncated, if necessary, to four (4) decimal places.

B5:

The posted prices for the high and low asking price for soybean oil found in the USDA AMS 3511 report for the Illinois region published on February 17, 2023 are 63.5100 and 64.5100 cents per pound with a simple average of 64.0100 cents per pound. Using the multiplier of 0.076465, the converted price is \$4.8945 per gallon for soybean oil. Five percent (5%) of that figure (\$0.2447 per gallon) plus 95% of the 2D base of \$2.8250 (\$2.6837) yields a base price for B5 fuel of \$2.9284 per gallon. To arrive at the adjustment for B5 fuel for a future week, subtract the current base price for Thursday, February 23, 2023 (\$2.9284 per gallon) from the current week's price (for example \$2.7284/gal.), which yields a price change of -\$0.2000 per gallon for B5 Biodiesel.

B10:

The posted prices for the high and low asking price for soybean oil found in the USDA AMS 3511 report for the Illinois region published on February 17, 2023 are 63.5100 and 64.5100 cents per pound with a simple average of 64.0100 cents per pound. Using the multiplier of 0.076465, the converted price is \$4.8945 per gallon for soybean oil. Ten percent (10%) of that figure (\$0.4894 per gallon) plus 90% of the 2D base of \$2.8250 (\$2.5425) yields a base price for B10 fuel of \$3.0319 per gallon. To arrive at the adjustment for B10 fuel for a future week, subtract the current base price for Thursday, February 23, 2023 (\$3.0319 per gallon) from the current week's price (for example \$2.7919/gal.), which yields a price change of -\$0.2400 per gallon for B10 Biodiesel.

All other terms and conditions stated above in the *Price Adjustments/Revisions* clause and "NOTE" will also apply to the price revisions for Biodiesel.

3.9 Best Pricing Offer

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

Contract, after consultation with the Contractor, may be reduced to a lower price on a prospective basis at the discretion of the Commissioner. The Commissioner reserves the right to request information to verify pricing for the purposes of this clause.

3.10 Price Structure

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

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

Should the OPIS posting locations used for diesel 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 the *OPIS Posting Locations* clause for additional factors.

3.11 Volume Discounts

Contractor may provide a Volume Discount within a given County for all individual orders 5,500 gallons or greater in Attachment 1 – Pricing.

The Volume Discount for a given County shall be applied to the invoice for each individual order placed by an Authorized User in such County which results in a single delivery of 5,500 gallons or greater.

3.12 Ordering

Purchase Orders shall be made in accordance with the terms set forth in Appendix B, *Purchase Orders*. Authorized Users may submit orders over the phone, and, if available, may submit orders electronically via web-based ordering, e-mail, or facsimile at any time. Orders submitted shall be deemed received by Contractor on the date submitted.

All orders shall reference Contract number, requisition, and/or Purchase Order number (if applicable). Upon Contractor's receipt of an order, confirmation is to be provided to the Authorized User electronically or via facsimile. Order confirmation should be sufficiently detailed, and include, at a minimum, purchase price, date of order, delivery information (if applicable), Authorized User name, and sales representative (if applicable).

3.12.1 Purchasing Card Orders

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

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

3.13 Minimum Order

Minimum delivery shall be 250 gallons at each delivery location (site) as determined by the delivery schedule. Deliveries under 250 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):

Quantity Delivered (in gallons)	Optional Surcharge
Under 250	\$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.

Determination for total gross tank capacity shall include all manifold tanks. All locations granted a request from the Contractor for “automatic replenishment”, per the *Automatic Replenishment* clause of this Contract, 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”.

3.14 Invoicing and Payment

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

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

- Contractor Name
- Contractor Billing Address
- Contractor Federal ID Number
- NYS Vendor ID Number
- Account Number
- NYS Contract Number
- Name of Authorized User indicated on the Purchase Order
- NYS Agency Unit ID (if applicable)
- Customer Delivery Location ID Number as shown on Delivery Schedule (if applicable)
- Authorized User’s Purchase Order Number
- Order Date
- Invoice Date
- Invoice Number
- Invoice Amount
- Product Descriptions
- Unit Price
- Quantity
- Unit of Measure
- Dates of Service/Delivery (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. In billing for winter mixes, invoices must include current Contract price for each grade, type of mixture furnished and computation of total price. Invoices should be formatted as per the example below:

EXAMPLE - Delivery of 4000 gallons of 2D/1D winter mix at a 1/1 ratio:
2,000 gals. × Adjusted 2D price = total cost of 2D product
+ 2,000 gals. × Adjusted 1D price = total cost of 1D product
Invoice Total (Total cost for delivery)

NOTE: If additives rather than kerosene is used to provide winter protection, the Contractor is allowed to charge market price for the additive, and as with kerosene, list the price as a separate line item on the invoice.

3.15 Product Delivery

Delivery of all Contract Products shall be made in accordance with Appendix B, *Product Delivery and Shipping/Receipt of Product*. Delivery shall be made as specified and in accordance with instructions furnished with each order, unless otherwise directed in writing. Contractor must be prepared, at all times, to make prompt delivery. 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 take place Monday through Friday (8:00 am - 5:00 pm). Saturday/Sunday deliveries are not standard and are to be made on an emergency basis (and not a regular basis) ONLY, or if a run out is imminent before the next normal delivery day. Delivery of fuel should give first priority to "human needs" customers.

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

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

3.16 Automatic Replenishment

Requests for automatic replenishment are preferred in WRITING from an Authorized User, but may be required by the Contractor. A Contractor shall provide written notification back to any Authorized User's request for

automatic replenishment on any tank with a total gross capacity equal to or greater than 500 gallons. Automatic replenishment for tank capacities less than 500 gallons will be at the Contractor's option and may be subject to a minimum order charge (see *Minimum Order* clause). Determination for total gross tank capacity shall include all manifolded tanks. The Contractor shall maintain a record of the estimated consumption of ULS diesel and biodiesel, and shall replenish the Authorized User's tank or tanks without further notice from the Authorized User, whenever necessary to ensure an adequate supply at all times.

If the Contractor, after having accepted the request from the Authorized User, permits the level of the fuel to fall below the percentages of the total capacity of the Authorized User's tank or tanks indicated in the following table, and does not meet the requirement to deliver on an emergency basis within four (4) hours, the Authorized User shall have the right to purchase sufficient fuel on the open market from another vendor to fill such tank or tanks, and to charge any increase in price paid over the current contract price to the account of the Contractor.

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

3.17 Delivery Schedules

The delivery schedules, based on Authorized Users' requirements submitted to Procurement Services by Requirement Letter RL 221, are available as a guide to indicate proposed delivery points and estimated annual quantities. Any specific questions regarding the site conditions should be directed to the end-user via any communication available shown on the Delivery Schedule. The delivery schedules are attachments in this Contract, and any updates (if any) are available on the OGS website.

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

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

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

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

3.18 Product Returns and Exchanges

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

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

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

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

3.19 Unanticipated Excessive Purchase

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

3.20 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. Bidder 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. 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.

3.21 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/>.

3.22 Insurance

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

3.23 Report of Contract Usage

Contractor shall submit Attachment 5 – *Report of Contract Usage* including total sales to Authorized Users of this Contract by Contractor, and all authorized resellers, dealers and distributors, if any, semi-annually (twice per year – due January 15th for sales July 1st through December 31st and due July 15th for sales January 1st through June 30th). If the Contract period begins or ends in a fractional portion of a reporting period, only the actual Contract sales for this fractional period should be included in the semi-annual report.

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

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

The report in Attachment 5 – *Report of Contract Usage* contains the minimum information required. Additional related sales information, such as detailed user purchases may be required by OGS and must be supplied upon request. Failure to submit reports on a timely basis may result in Contract cancellation and designation of Contractor as non-responsible.

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

I. New York State Law

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

II. General Provisions

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

III. Equal Employment Opportunity (EEO)

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

1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate, or distinct from the Contract; or (ii) employment outside New York State.
2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor's equal employment opportunity policy. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.

B. Form EEO 100 – Staffing Plan

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

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

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

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

IV. Contract Goals

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

B. Good Faith Efforts

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

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

V. **Fraud**

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

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

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

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

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

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, 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, 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/>

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

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

3.26 Use of Recycled or Remanufactured Materials

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

3.27 Surplus/Take-Back/Recycling

- I. A State Agency is reminded of its obligation to comply with the NY State Finance Law § 167, Transfer and Disposal of Personal Property, and § 168, The Management of Surplus Computer Equipment, regarding transfer and disposal of surplus personal property before utilizing take-back, recycling, or other options for disposition of equipment that is still in operable condition.
- II. If Contractor offers a take-back/recycling program, then Contractor shall provide a record of disposition to each Authorized User who participates in the take-back/recycling program for units transferred for disposition. Contractor shall provide documentation that the units were disposed of in an environmentally sound manner in compliance with applicable local, state and federal laws. See Section III below for specific requirements governing electronic equipment recycling.
- III. The NYS Department of Environmental Conservation ("DEC") Electronic Equipment Recycling and Reuse Act ("Act") (Environmental Conservation Law, Article 27, Title 26, Electronic Equipment Recycling and Reuse), requires manufacturers to establish a convenient system for the collection, handling, and recycling or reuse of electronic waste. If Contractor is a manufacturer of electronic equipment covered by the Act, Contractor agrees to comply with the requirements of the Act. More information regarding the Act can be found on the DEC website at: <http://www.dec.ny.gov/chemical/65583.html>
- IV. If a Contractor offers a take-back/recycling program or offers an electronic equipment recycling program pursuant to the Act, and an Authorized User participates in same, then the Authorized User shall ensure the destruction of all data from any hard drives surrendered with the machines/covered electronic equipment. Contractor shall not require an Authorized User to surrender the hard drive, as an Authorized User may wish to retain the hard drive for security purposes. Contractor shall advise the Authorized User in advance if the retention of the hard drive results in additional fees or reduction in trade-in value. It is recommended that an Authorized User use a procedure for ensuring the destruction of confidential data stored on hard drives or other storage media that meets or exceeds the National Institute of Standards and Technology ("NIST") Guidelines for Media Sanitation as found in NIST Special Publication 800-88.

3.28 Environmental Attributes and NYS Executive Order Number 22

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

3.29 Consumer Products Containing Mercury

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

3.30 Diesel Emission Reduction Act

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

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

3.31 Guarantee

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

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

3.32 Engineering Service

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

3.33 NYS Vendor Responsibility

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity. The Commissioner of OGS, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of OGS issues a written notice authorizing a resumption of performance under the Contract.

The Contractor agrees that if it is found by the State that Contractor's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Contract may be terminated by the Commissioner of OGS at the Contractor's expense where the Contractor is determined by the Commissioner of OGS to be non-responsible. In such event, the Commissioner of OGS may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

3.34 NYS Tax Law Section 5-a

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

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

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

3.35 Non-State Agencies Participation in Centralized Contracts

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

State), the terms of the *Price* clause shall be modified to include delivery to locations adjacent to New York State.

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

3.36 Extension of Use

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

3.37 New Accounts

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

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

3.38 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, *Modification of Contract Terms*.

3.39 Drug and Alcohol Use Prohibited

For reasons of safety and public policy, the use of alcoholic beverages or illegal drugs by the Contractor's personnel shall not be permitted in performance of the Contract.

3.40 Traffic Infractions

Neither the State nor Authorized Users will be liable for any expense incurred by the Contractor's personnel for any parking fees or as a consequence of any traffic infraction or parking violation attributable to employees of the Contractor in performance of the Contract.

3.41 Appendix B Modifications

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

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

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

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

4. GENERAL PROVISIONS

4.1 Notices

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

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

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

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

4.2 Captions

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

4.3 Severability

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

4.4 Counterparts

This Contract may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same Contract. Any signature page of any such counterpart may be attached or appended to any counterpart to complete a fully executed counterpart of this Contract, and shall bind such party.

4.5 Entire Agreement

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

CONTRACT SIGNATURE PAGE

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

CONTRACTOR

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

THE PEOPLE OF THE STATE OF NEW YORK

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

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

