



Office of General Services Procurement Services

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

Contract Award Notification

| | | |
|--------------------------------|---|--|
| Title | : | Group – Ultra-Low Sulfur Diesel & Biodiesel Fuel (On-Road Use Only) (Certain Counties) Classification Code(s): 15 |
| Award Number | : | <u>23298</u> (Partially Replaces Award 23236) |
| Contract Period | : | November 3, 2023 – November 20, 2024 |
| Bid Opening Date | : | June 7, 2023 |
| Date of Issue | : | October 25, 2023 (Revised August 15, 2024) |
| Specification Reference | : | As Incorporated Herein |
| Contractor Information | : | Appears on Page 2 of this Award |

Address Inquiries To:

| State Agencies & Vendors | Political Subdivisions & Others |
|--|--|
| Name : Sandra Fernandes Title : Contract Management Specialist Phone : 518-473-2545 E-mail : Sandra.Fernandes@ogs.ny.gov | Procurement Services Customer Services Phone : 518-474-6717 E-mail : customer.services@ogs.ny.gov |

Procurement Services values your input.
Complete and return "Contract Performance Report" at end of document.

Description

The purpose of this Contract is to provide State and Non-state agencies with a method to procure various types of Ultra-Low Sulfur (ULS) diesel and biodiesel fuel for on-road use only. The product shall be furnished, delivered and unloaded by the Contractor to Authorized Users' storage tanks, as specified herein. For current contract prices, please go to the Pricing Information link on the Award page.

This Award has 0 % MBE, 0 % WBE and 0 % SDVOB goal requirements.

PR # 23298

NOTE: See individual contract items to determine actual awardees.

| Contract Number | Contractor & Address | Contact Information | FEIN / NYS Vendor ID |
|-----------------|---|--|-------------------------|
| PC70145 SB | Buell Fuel, LLC 2676 State Route 12B Deansboro, NY 13328 | Garth Curtis Director Phone: 315-841-3000 Email: Garth@buellfuel.com Customer Service Contact for NYS Contract Orders during Normal Business Hours: M – F 7:30am – 5:00pm, Sat 8am – 12pm Julia Brouillette Operations Manager Phone: 315-841-3000 Email: julia@buellfuel.com Person to Contact to Escalate Contract Orders: Garth Curtis Director Phone: 315-841-3000 Email: garth@buellfuel.com Contact for After Hours, Weekend/Holidays, or NYS Declared Emergency: Garth Curtis Director Phone: 315-404-3899 Email: Garth@buellfuel.com Backup Contact for NYS Declared Emergencies or Disasters (available throughout emergency): Mike Buell Owner Phone: 315-941-9716 Email: MB@buellfuel.com | 760826999 1000009690 |
| PC70146 | Mirabito Holdings, Inc. dba Mirabito Energy Products 49 Court Street, P.O. Box 5306 Binghamton, NY 13902 | Joe D’Esti Pricing and Bid Administrator Phone: 607-352-2958 Toll-Free: 800-934-9480 Email: Joe.Desti@mirabito.com Customer Service Contact for NYS Contract Orders during Normal Business Hours: M – F 8:00am – 5:00pm Paul Gunther Customer Service Manager Phone: 607-352-2830 Toll-Free: 800-934-9480 Email: Paul.Gunther@mirabito.com Person to Contact to Escalate Contract Orders: Jason Mirabito V.P. Wholesale Fuels Phone: 607-352-2930 Cell Phone: 607-651-5000 Email: jason.mirabito@mirabito.com Contact for After Hours, Weekend/Holidays, or NYS Declared Emergency George Mister Transportation Manager | 150552668 1000007358 |

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|----------------------|---|---|--------------------------|
| | | 607-352-2811 800-934-9480 george.mister@mirabito.com Backup Contact for NYS Declared Emergencies or Disasters (available throughout emergency): Justin Fisher V.P. Fuel Supply Phone: 607-352-2845 Toll Free Phone: 607-435-6074 Email: justin.fisher@mirabito.com | |
| PC70147 SB | MX Petroleum Corp. 22 Center Street Massena NY 13662 | Jeanine Caron VP of Finance Phone: 315-769-9500 Toll-Free: 1-800-840-0645 Email: j.caron@mxfuels.com Customer Service Contact for NYS Contract Orders during Normal Business Hours: Matt Bard Sales and Marketing Manager Phone: 315-769-9500 Toll-Free: 1-800-840-0645 Email: m.bard@mxfuels.com Person to Contact to Escalate Contract Orders: Matt Bard Sales and Marketing Manager Phone: 315-769-9500 Toll-Free: 1-800-840-0645 Email: m.bard@mxfuels.com Contact for After Hours, Weekend/Holidays, or NYS Declared Emergency Matt Bard Sales and Marketing Manager Phone: 315-769-9500 Toll-Free: 1-800-840-0645 Email: m.bard@mxfuels.com Backup Contact for NYS Declared Emergencies or Disasters (available throughout emergency): Jeanine Caron VP of Finance Phone: 315-769-9500 Toll Free Phone: 1-800-840-0645 Email: j.caron@mxfuels.com | 16-1352970 1000015801 |
| PC70148 | Sunoco, LLC* 3801 West Chester Pike Newtown Square Pennsylvania 19073 | Mathew Scheiber Government Contract Specialist Phone: 260-324-7925 Email: mathew.scheiber@sunoco.com Customer Service Contact for NYS Contract Orders during Normal Business Hours: Sunoco Dispatch/ Government Contract Team Phone: 260-423-4477 Toll-Free: 866-248-4344 Email: govorders@gladieuxenergy.com Person to Contact to Escalate Contract Orders: Jessica Gonzalez Government Contract Specialist Phone: 260-324-7926 | 46-4151222 1100298103 |

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|--|--|--|--|
| | | Email: jessica.gonzalez@sunoco.com Contact for After Hours, Weekend/Holidays, or NYS Declared Emergency Charles Hunt Dispatch Manager Phone: 260-324-7921 Email: charles.hunt@sunoco.com Backup Contact for NYS Declared Emergencies or Disasters (available throughout emergency): Mathew Scheiber Government Contract Specialist Phone: 260-324-7925 Email: mathew.scheiber@sunoco.com | |
| Sunoco, LLC* is a disregarded entity of Sunoco, LP. Sunoco, LP Employer Identification Number is 300740483. The Parent/Owner's Employer Identification Number is used for payment and tax reporting purposes under the Contract. Sunoco, LLC is the entity who holds Contract PC70148, and is fully responsible for the performance of duties under Contract PC70148. As stated above, it is the Parent/Owner's Employer Identification Number that is used for payment and tax reporting purposes under the Contract. | | | |

Cash Discount, If Shown, Should be Given Special Attention.

AGENCIES SHOULD NOTIFY NEW YORK STATE PROCUREMENT SERVICES PROMPTLY IF THE CONTRACTOR FAILS TO MEET DELIVERY OR OTHER TERMS OF THIS CONTRACT. PRODUCTS OR SERVICES WHICH DO NOT COMPLY WITH THE SPECIFICATIONS OR ARE OTHERWISE UNSATISFACTORY TO THE AGENCY SHOULD ALSO BE REPORTED TO PROCUREMENT SERVICES.

SMALL, MINORITY AND WOMEN-OWNED BUSINESSES:

The letters SB listed under the Contract Number indicate the contractor is a NYS small business. Additionally, the letters MBE and WBE indicate the contractor is a Minority-owned Business Enterprise and/or Woman-owned Business Enterprise.

RECYCLED, REMANUFACTURED AND ENERGY EFFICIENT PRODUCTS:

Procurement Services supports and encourages the purchase of recycled, remanufactured, energy efficient and "energy star" products. If one of the following codes appears as a suffix in the Award Number or is noted under the individual Contract Number(s) in this Contract Award Notification, please look at the individual awarded items for more information on products meeting the suffix description.

| | |
|------------|---------------------------|
| RS, RP, RA | Recycled |
| RM | Remanufactured |
| SW | Solid Waste Impact |
| EE | Energy Efficient |
| E* | EPA Energy Star |
| ES | Environmentally Sensitive |

NOTE TO AUTHORIZED USERS:

When placing purchase orders under the contract(s), the authorized user should be familiar with and follow the terms and conditions governing its use which usually appears at the end of this document. The authorized user is accountable and responsible for compliance with the requirements of public procurement processes. The authorized user must periodically sample the results of its procurements to determine its compliance. In sampling its procurements, an authorized user should test for reasonableness of results to ensure that such results can withstand public scrutiny.

The authorized user, when purchasing from OGS contracts, should hold the contractor accountable for contract compliance and meeting the contract terms, conditions, specifications, and other requirements.

Also, in recognition of market fluctuations over time, authorized users are encouraged to seek improved pricing whenever possible.

Authorized users have the responsibility to document purchases, particularly when using OGS multiple award contracts for the same or similar product(s)/service(s), which should include:

- a statement of need and associated requirements,
- a summary of the contract alternatives considered for the purchase,
- the reason(s) supporting the resulting purchase (e.g., show the basis for the selection among multiple contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).

AWARDS BY COUNTY

The pricing included in this section is the original pricing bid by the contractors. For current pricing, please go to the Pricing Information link on the Award page.

| County | Fuel Type | Price Per Gallon 2D | Price Per Gallon 1D | Volume Discount (5,500 gal or more) | Contractor |
|--------------|-------------------|---------------------|---------------------|-------------------------------------|--------------|
| Albany | ULSD 2D Regular | \$2.9015 | \$3.3533 | \$0.0000 | Buell Fuel |
| Albany | ULSD 2D Premium | \$2.9150 | \$3.3583 | \$0.0000 | Buell Fuel |
| Albany | ULSD 2D BIO (B5) | \$3.1149 | \$3.5098 | \$0.0000 | Mirabito |
| Columbia | ULSD 2D Regular | \$3.1032 | \$3.8450 | \$0.0000 | Sunoco LLC |
| Columbia | ULSD 2D BIO (B5) | \$3.1417 | \$4.1315 | \$0.0000 | Mirabito |
| Fulton | ULSD 2D BIO (B5) | \$2.8961 | \$3.5075 | \$0.0000 | Buell Fuel |
| Greene | ULSD 2D Regular | \$3.1782 | \$3.6483 | \$0.0000 | Mirabito |
| Greene | ULSD 2D BIO (B5) | \$3.2534 | \$3.6483 | \$0.0000 | Mirabito |
| Montgomery | ULSD 2D BIO (B5) | \$2.8961 | \$3.5075 | \$0.0000 | Buell Fuel |
| Rensselaer | ULSD 2D Regular | \$2.9050 | \$3.3595 | \$0.0000 | Buell Fuel |
| Rensselaer | ULSD 2D BIO (B5) | \$3.1109 | \$3.5058 | \$0.0000 | Mirabito |
| Rensselaer | ULSD 2D BIO (B10) | \$3.2144 | \$3.5058 | \$0.0000 | Mirabito |
| Saratoga | ULSD 2D Regular | \$3.0472 | \$3.5455 | \$0.0000 | Mirabito |
| Saratoga | ULSD 2D BIO (B5) | \$3.1779 | \$3.5728 | \$0.0000 | Mirabito |
| Schenectady | ULSD 2D Premium | \$2.8765 | \$3.3933 | \$0.0000 | Buell Fuel |
| Schenectady | ULSD 2D BIO (B5) | \$3.1779 | \$3.5728 | \$0.0000 | Mirabito |
| St. Lawrence | ULSD 2D Regular | \$3.0730 | \$3.5713 | \$0.0000 | MX Petroleum |
| Ulster | ULSD 2D BIO (B5) | \$3.3752 | \$3.8950 | \$0.0000 | Sunoco LLC |
| Ulster | ULSD 2D BIO (B10) | \$3.4772 | \$3.8950 | \$0.0000 | Sunoco LLC |
| Warren | ULSD 2D Regular | \$3.0550 | \$3.7033 | \$0.0000 | Sunoco LLC |
| Warren | ULSD 2D Premium | \$3.0950 | \$3.7033 | \$0.0000 | Sunoco LLC |
| Warren | ULSD 2D BIO (B5) | \$3.2784 | \$3.7533 | \$0.0000 | Sunoco LLC |
| Washington | ULSD 2D Regular | \$2.9750 | \$3.3636 | \$0.0000 | Buell Fuel |
| Washington | ULSD 2D Premium | \$2.9850 | \$3.3736 | \$0.0000 | Buell Fuel |
| Washington | ULSD 2D BIO (B5) | \$3.2784 | \$3.7633 | \$0.0000 | Sunoco LLC |

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.

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.

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.

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.

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.

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).

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".

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.

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.

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.

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 |

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.

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.

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.

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.

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.

POOR PERFORMANCE:

Authorized Users should notify Procurement Services promptly if the Contractor fails to meet the requirements of this Contract. Performance which does not comply with requirements or is otherwise unsatisfactory to the Authorized User should also be reported to Procurement Services.

**State of New York
Office of General Services
PROCUREMENT SERVICES
Contract Performance Report**

Please take a moment to let us know how this contract award has measured up to your expectations. If reporting on more than one contractor or product, please make copies as needed. This office will use the information to improve our contract award, where appropriate. **Comments should include those of the product's end user.**

Contract No.: _____ **Contractor:** _____

Describe Product* Provided (Include Item No., if available): _____

***Note:** "Product" is defined as a deliverable under any Bid or Contract, which may include commodities (including printing), services and/or technology. The term "Product" includes Licensed Software.

| | Excellent | Good | Acceptable | Unacceptable |
|---|-----------|------|------------|--------------|
| • Product meets your needs | | | | |
| • Product meets contract specifications | | | | |
| • Pricing | | | | |

CONTRACTOR

| | Excellent | Good | Acceptable | Unacceptable |
|-------------------------------------|-----------|------|------------|--------------|
| • Timeliness of delivery | | | | |
| • Completeness of order (fill rate) | | | | |
| • Responsiveness to inquiries | | | | |
| • Employee courtesy | | | | |
| • Problem resolution | | | | |

Comments: _____

_____ (over)

Agency: _____ Prepared by: _____

Address: _____ Title: _____

_____ Date: _____

_____ Phone: _____

_____ E-mail: _____

Please return via e-mail to OGS.sm.ps_CM_FleetFuelRoads@ogs.ny.gov or mail to:

NYS Office of General Services
Procurement Services
Attn: Fuels Team
38th Fl, Corning Tower, ESP
Albany, New York 12242