

**AGREEMENT FOR
LIQUEFIED PETROLEUM GAS (LPG) –
PROPANE (STATEWIDE)**

BY AND BETWEEN

NEW YORK STATE

OFFICE OF GENERAL SERVICES

AND



CONTRACT NUMBER PC 



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**STATE OF NEW YORK
OFFICE OF GENERAL SERVICES
AGREEMENT # PCXXXXX
CENTRALIZED CONTRACT FOR THE ACQUISITION OF
LIQUEFIED PETROLEUM GAS (LPG) – PROPANE (STATEWIDE)**

THIS AGREEMENT (hereinafter the “Contract” or the “Agreement”) is made 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 **XXXXXXXXXXXXXX**, having its principal place of business at **XXXXXXXXXXXXXX** (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 Liquefied Petroleum Gas (LPG) – Propane, as further described herein; and

WHEREAS, OGS conducted a competitive procurement to identify the bidder(s) which could provide the Liquefied Petroleum Gas (LPG) – Propane at the lowest cost, referred to as IFB #23283 (hereinafter the “IFB” or the “Solicitation”), which was advertised on February 6, 2023 in the New York State Contract Reporter, as required by New York State Economic Development Law; and

WHEREAS, awards were made by Grand Total Bid Per County on the basis of lowest price to a responsive and responsible bidder, in accordance with the method of award set forth in the IFB; and

WHEREAS, the State has determined: that the Contractor submitted the lowest cost responsive proposal for one or more counties as described herein; that the Contractor is a responsible vendor; and that the Contractor is willing to provide the commodities set forth herein under the terms and conditions contained herein;

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

1. INTRODUCTION

1.1 OVERVIEW AND SCOPE

The purpose of this Contract is to provide Authorized Users with a means of acquiring Liquefied Petroleum Gas (LPG) – Propane by 20 LB cylinders (4.7 gallons), 34 LB cylinders (7.9 gallons), 100 LB cylinders (23.6 gallons), and Bulk gallons, which includes tank and regulator installations, testing and inspections provided by the Contractor, as set forth in the Price clause herein.

This Contract is based on the Liquefied Petroleum Gas (LPG) requirements submitted to OGS by Authorized Users, in which 56 of the 62 counties had filed requirements, and the following six (6) counties had no filed requirements: Allegany, Bronx, Kings, New York, Queens, and Richmond. The specific users, counties, and tank types are listed in the Delivery Schedules. See Attachments 2 and 3.

1.2 ESTIMATED QUANTITIES

This Contract is an estimated quantity Contract. The estimated quantities are based on requirements submitted to OGS by Authorized Users of the Contract. The estimates are specified in Attachment 1 – Pricing, Attachment 2 – Delivery Schedule – State Agencies, and Attachment 3 – Delivery Schedule – Political Subdivisions, Local Governments and Other Eligible Non-State Agencies.

By filing requirements with OGS, the Authorized User has agreed to purchase all of their Liquefied Petroleum Gas (LPG) – Propane requirement needs from the Contract(s), and the Authorized User has agreed not to enter into any other contracts for Liquefied Petroleum Gas (LPG) – Propane.

However, no specific quantities are represented or guaranteed and the State provides no guarantee of individual Authorized User participation. Each Contract shall be for the quantities or dollar values actually ordered during the Contract period and the Contractor must furnish all quantities actually ordered, at or below the Contract prices. The individual value of each Contract is indeterminate. OGS makes no guarantee as to how much fuel will actually be ordered and/or delivered. See Sections 28, *Estimated/Specific Quantity Contracts* and 25, *Participation in Centralized Contracts* in Appendix B, General Specifications.

1.3 NYS COMPTROLLER APPROVAL

In accordance with Section 112 of the State Finance Law, this Contract shall not be valid, effective or binding upon the State until the 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.

1.4 DEFINITIONS

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

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

“**Authorized User(s)**” as defined in Appendix B.

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

“**Business Hours**” shall refer to 8:00 AM to 5:00PM ET on Business Days.

“**Customer**” shall mean an Authorized User that participates in the contract.

“**Delivery**” shall be the act of taking an ordered product to a person or place. Refer to the “*Product Delivery*” clause in this Solicitation 6.11.

“**Delivery Point**” shall mean the point where Liquefied Petroleum Gases (LPG) – Propane exits one system and enter another.

“**Grand Total Bid Per County**” shall be the total of the number of gallons requested in a county for each size/type of LPG cylinder, multiplied by the price offered by the Bidder for each of the requested sizes. The sum of all extended prices in a county added together shall result in the Grand Total Bid Per County.

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

“**Liquefied Petroleum Gas (LPG)**” is also known as Propane.

“**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; Dr. Martin Luther King, Jr. Day; Washington’s Birthday (observed); Memorial Day; Juneteenth; Independence Day; Labor Day; Columbus Day; Veterans’ Day; Thanksgiving Day; and Christmas Day.

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

“**Post 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 (“NYSPPSP”); 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 (“NYSP”) 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.”

2. CONTRACT TERMS AND CONDITIONS

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

2.1 CONTRACT DOCUMENTS AND CONFLICT OF TERMS

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

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

2.2. CONTRACT TERM AND EXTENSIONS

- A. Base Term. The Contract shall be in effect for a term of two (2) years. The Contract term shall commence on the later of July 1, 2023 or after all necessary approvals and shall become effective upon the date of OSC approval of the final executed documents.
- B. Extensions. At the State’s option, and subject to the approval of OSC, the Contract may be extended for three (3) years, in increments as deemed to be in the best interest of the State. Whether the optional extensions are exercised is at the sole discretion of the State. A Contractor shall retain the right to decline a Contract extension offered under this section. Any Contract extension will be under the same terms and conditions, subject to 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.

2.3. SHORT TERM EXTENSION

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

2.4. NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS

New York State political subdivisions and others authorized by New York State law may participate in Centralized Contracts. These include, but are not limited to local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations.

See Section 25, *Participation in Centralized Contracts* in Appendix B, *General Specifications*. 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 (<http://www.ogs.state.ny.us/purchase/snt/othersuse.asp>). Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to Procurement Services, Customer Services at 518-474-6717.

2.5. NEW ACCOUNTS

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

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

2.6. EXTENSION OF USE

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

2.7. NEW YORK STATE VENDOR RESPONSIBILITY

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS or her designee, 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 or his or her designee, 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 or her designee issues a written notice authorizing a resumption of performance under the Contract.

The Contractor agrees that if it is found by the State that the Contractor's response 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 or his or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of OGS or his or her designee to be non-responsible. In such event, the Commissioner of OGS or his or her designee may

complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

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

2.8. CONTRACTOR REQUIREMENTS AND PROCEDURES FOR 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 (“MWBES 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 and conviction and prior arrest.

IV. Contract Goals

- A. For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers, or suppliers to Contractor. Contractor is, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

B. Good Faith Efforts

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

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

V. Fraud

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

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

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

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

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

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

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

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

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

2.10. CONTRACTOR INSURANCE REQUIREMENTS

The Contractor shall procure at its sole cost and expense, and shall maintain in force at all times during the term of this Contract, policies of insurance in accordance with the requirements of Attachment 4 – Insurance Requirements.

2.11. PRICE

Contract Prices are set forth in Attachment 1 – Pricing.

All Contract pricing shall include:

- All applicable customs duties, taxes, licenses, charges and F.O.B. destination
- Installations of tanks and regulators
- Use of the equipment for the life of the contract
- Initial leak testing
- Operational instruction of agency personnel
- Periodic inspections of the installations to meet all safety requirements
- The cost for removal of all tanks within thirty (30) days of the contract expiration, unless the contractor is either successful in obtaining a new contract award for that location or arranges to exchange tanks with the new successful contractor (See *Product Returns and Exchanges* clause).

Contract pricing does not include:

- Modifications to interior appliances to meet safety codes
- Additional piping required beyond the exterior wall of a building to bring a facility up to safety code compliance
- The addition of an appliance

If the Contractor extends any special 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 Liquefied Petroleum Gas under similar contractual terms and conditions.

Contract prices shall be firm except that price revisions shall be permitted in accordance with the Price Adjustments clause and with respect to certain taxes and duties as follows:

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

"After-relieved tax" means any amount of Federal, State and local excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on Liquefied Petroleum Gas (LPG) – Propane purchased under the Contract which the Contractor is not required to pay or bear the burden of, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial or administrative action taking effect after the date of Contract award.

The Contract price shall include all applicable Federal, State and local taxes, and duties, as stated in Appendix B, *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 Liquefied Petroleum Gas under the 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 adjustment.

The price for Liquefied Petroleum Gas under the 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 adjustment.

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

The Contractor shall promptly notify the Procurement Services Contract Management Specialist of all matters relating to any excise tax or duty that reasonably may be expected to result in either an increase or decrease in the Contract price for liquefied petroleum gas 30 days prior to adding to invoices.

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 Contractor's guaranteed delivery timeframe. For example, the Authorized User orders 500 gallons of propane 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 (i.e., 40,000 gallons or more than a truck load, or delivering over a period of time), it is important that the Contractor and Authorized User contact OGS Procurement Services. OGS's intent is for all parties to have the same expectations for delivery and price.

2.12. OPIS POSTING

For purposes of this Contract, The OPIS Posting of "Propane Pipeline Selkirk" has been established for all counties. Contractor's pricing will be based on the posted price for Propane Pipeline Selkirk in Oil Price Daily.

2.13. 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.

2.14. 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.

2.15. 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.

2.16. PRICE ADJUSTMENTS/REVISIONS

Contract prices shall be firm except that price revisions will be permitted on a monthly basis, in accordance with the following procedure:

Price revisions (increases or decreases) to the original contract price shall be based on posted prices in Oil Price Daily (formally The Journal of Commerce), under the heading of Propane Pipeline Selkirk. The terms “Posting Day” or “Posted Price” as used throughout this Contract refers to the actual day the prices are posted.

The Propane Pipeline Selkirk price shown in the OPIS Oil Price Daily posting 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 **November 30, 2022 (\$1.2097/gal.)** and the Posted Price on the last business day of every month for the duration of the contract, beginning with the Oil Price Daily, Propane Pipeline Selkirk, NY Posted Price on June 30, 2023. The differential between these two (2) prices will be added or subtracted to the bid price (base price) per gallon, yielding the new monthly price. If contract award is made in a subsequent month after July 2023, then the posted price on the last business day in the preceding month will be used.

The aforementioned mechanism for monthly 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 on the first day of each month.

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

Should the monthly price revision cycle not provide adequate price adjustments, because of rapid changes in worldwide Liquefied Petroleum Gas (LPG) – Propane prices, the State reserves the right to increase the frequency of the price revisions to a weekly basis. The weekly basis will utilize the Posted Price on the last business day of the week, to be effective the next business day.

Should postings 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 the Propane Pipeline Selkirk price is not posted on a specified “Posting Day”, the “Posting Day” will be the day previous to when a posted price is available in OPIS’s publication. In the event the monthly “Posting Day” falls as a Holiday, the State will utilize the previous day’s posting for the monthly period.

Price increases are limited to changes in pre-selected postings as noted above. Increases in Contract costs or prices to compensate for other increases in the cost of doing business, regardless of 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 Contract is extended.

2.17. BEST PRICING OFFER

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

2.18. 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, Contractor 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 Propane Pipeline Selkirk location become unworkable or unavailable, the Commissioner reserves the right to switch to the most appropriate index and/or location, and adjust the bid price accordingly.

Please refer to section 2.12, *OPIS Posting* for additional information.

2.19. PREVAILING WAGE RATES – PUBLIC WORKS AND BUILDING SERVICES CONTRACTS

Work performed under the Contract is subject to the prevailing wage rate provisions of New York State Labor Law. See "Prevailing Wage Rates - Public Works and Building Services Contracts" in Appendix B, General Specifications and see "Wage and Hour Provisions" in Appendix A, clause 6. Any federal or State determination of a violation of any public works law or regulation, or labor law or regulation, or any OSHA violation deemed "serious or willful" may be grounds for a determination of vendor non-responsibility. The applicable Prevailing Wage Rate Schedule for this project is **PRC # 2022901219**

For access to the Department of Labor (DOL) Prevailing Wage Schedule, use the following link:
<https://applications.labor.ny.gov/wpp/showFindProject.do?method=showIt>

For Prevailing Wage Updates, use the following DOL link:
<https://applications.labor.ny.gov/wpp/publicViewPWChangesArt9.do?method=showIt>

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

IMPORTANT NOTE: The above PRC number MUST be noted on all purchase orders issued for purchases from this Contract.

2.20. ORDERING

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

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

2.21. MINIMUM ORDER

There is no minimum order for this Contract.

2.22. PURCHASING CARD ORDERS

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

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

2.23. 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
- Date of Service/Delivery

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

2.24. 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, and the delivery time shall not exceed 48 hours from the time of order. Should there be a State declared emergency, an after-hours or weekend emergency, or should agency run out of propane at any time creating an emergency situation, the Contractor shall be required to provide product within four (4) hours of contact 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 Liquefied Petroleum Gas – Propane on the open market to fill such tank or tanks, and to charge any increase in price paid over the current Contract price to the account of the Contractor.

Authorized Users shall be responsible for insuring that tanks are accessible to the Contractor. Authorized Users should also make certain that receiving personnel are available at time of delivery. 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 the Authorized User.

NOTE: Contractor agrees to complete all installations for Authorized Users on the awarded Delivery Schedules no later than July 21, 2023, and within twenty-one (21) days, unless otherwise agreed between the Authorized User and Contractor, for new customers after receipt of a purchase order (or other ordering mechanism between Contractor and ordering entity), except in an emergency situation. Contractor must arrange service for set up with particular agency, and/or existing contractor as needed.

2.25. 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. The Contractor shall maintain a record of the estimated consumption of Liquefied Petroleum Gas – Propane, and shall replenish the Authorized User's tank or tanks without further notice from the Authorized User, whenever necessary to insure an adequate supply at all times.

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

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

2.26. DELIVERY SCHEDULES

The delivery schedules, based on Authorized Users' requirements submitted to Procurement Services by Requirement Letter RL 219, are available (See Attachments 2 and 3) as a guide to indicate proposed delivery points and estimated annual quantities. This information is available to clarify delivery conditions, where possible. Any specific questions regarding the site conditions should be directed to the end-user via any communication available shown on the Delivery Schedule. The delivery schedules are attached to this Contract, and any updates (if any) are available upon direct request to OGS Contract Management Specialist.

Contractors shall be obligated to deliver to any State agency which places a Purchase Order (or other ordering mechanism between the Contractor and ordering entity) under the Contract, whether or not such delivery location is identified in the Delivery Schedules. Any political subdivision or other non-State entity which has not filed a requirement with OGS Procurement Services 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. These locations shall be included in the delivery schedule and receive contract pricing.

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

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

2.27. 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 shipment, 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.

2.28. UNANTICIPATED EXCESSIVE PURCHASE

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

2.29. CONTRACT ADMINISTRATION

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

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

2.30. NYS FINANCIAL SYSTEM

New York State is currently operating on an Enterprise Resource Planning (ERP) system, Oracle PeopleSoft Software, referred to as the Statewide Financial System (SFS). SFS 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/>.

2.31. 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/or delivering of fuel under the Contract and shall be liable for any damages for which Contractor or Contractor's 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 is available here: <http://www.dec.ny.gov/chemical/8428.html>

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

2.32. 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.

2.33. SURPLUS/TAKE-BACK/RECYCLING

At the termination of the Contract, the Contractor is required to remove its own tank(s) within thirty (30) calendar days of the contract expiration date; unless the Contractor is either successful in obtaining a new contract award for that location, or arranges to exchange tanks with the new successful contractor.

The purchasing agency shall be given a refund by the Contractor for any remaining Liquefied Petroleum Gas left in the propane tank at the time it is removed when the Contract expires. The refund will be based on the last Contract price per gallon on the last day of the Contract term, and would apply to all terminated Contract locations, and the Contract price per gallon at the time of vendor notification of account termination during the Contract term.

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.

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.

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.

2.34. 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 Solicitation. 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*.

2.35. 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 Bidder hereby certifies and warrants that all

heavy duty vehicles, as defined in the Law, to be used under this Contract, will comply with the specifications and provisions of the Law, and 6 NYCRR Parts 248 and 249.

2.36. CONSUMER PRODUCTS CONTAINING MERCURY

Contractor agrees that it will not sell or distribute fever thermometers containing mercury or any Products containing elemental mercury for any purpose under the Contract.

2.37. TRAFFIC INFRACTIONS

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

2.38. DRUG USE PROHIBITED

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

2.39. 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 (MWBs), small business enterprises (SBEs), or Service-Disabled Veteran-Owned Businesses (SDVOBs).

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

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

2.40. AMERICANS WITH DISABILITIES ACT

The federal ADA bars employment discrimination and requires all levels of government to provide necessary and reasonable accommodations to qualified workers with disabilities. Contractor is required to identify and offer any Products it manufactures or adapts that may be used or adapted for use by persons with visual, hearing, or any other physical disabilities. Although it is not mandatory for Contractor to have these Products in order to receive an award, it is necessary to identify any such Products offered that fall into the above category.

2.41. 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

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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.

2.42. ENVIRONMENTAL SUSTAINABILITY AND NYS EXECUTIVE ORDER 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. SPECIFICATIONS

3.1. PRODUCT AND TANK REQUIREMENTS

The Contractor guarantees that the product supplied will meet or exceed the ASTM Specifications for Liquefied Petroleum (LP) Gases, Designation D1835 or latest revision thereof, and the New York State Uniform Fire Prevention and Building Code with the latest revisions approved by the Code Council.

Should the Contractor determine that an agency-owned tank is not in compliance with New York State and/or Federal regulations at any time within the Contract period, then the agency, at its discretion, can either replace its tank, or the Contractor shall provide and install a suitable and acceptable replacement Liquefied Propane tank(s) as appropriate for the duration of the Contract term. The Contractor is not required to supply or install a replacement tank that is above and beyond normal business costs. Contractor is expected to take reasonable steps to protect the property and grounds.

3.2. FILL AND VENT REQUIREMENTS/VAPOR RECOVERY SYSTEMS

Agencies must ensure that fill and vent equipment meets NYS Standards. Contractors have the responsibility for reporting faulty or non-compliant equipment to the end users and the appropriate NYS regulatory agencies.

3.3. PETROLEUM TRANSFER REQUIREMENTS

Contractor must be prepared, at all times, to make prompt delivery as ordered. In State declared emergencies, fuel must be delivered within four (4) hours of notification.

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

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

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 as set forth in Appendix B, Section 22, *Contract Creation/Execution*. The State further warrants that, where Contractor is asked to execute multiple original copies of this signature page along with a complete original copy of the Contract, the approved signature page(s) will be affixed by the State, upon receipt of all necessary approvals, to additional copies of this Contract which conform exactly to the complete original copy as submitted by Contractor and executed simultaneously therewith.

CONTRACTOR

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

THE PEOPLE OF THE STATE OF NEW YORK

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

NEW YORK STATE OFFICE OF THE STATE COMPTROLLER:

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), 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).

CORPORATE ACKNOWLEDGMENT

STATE OF }
 :
COUNTY OF } **ss.:**

On the _____ day of _____ in the year 20____, before me personally came: _____, to me known, who, being by me duly sworn, did depose and say that he/she/they reside(s) in _____; that he/she/they is (are) _____ (the President or other officer or director or attorney in fact duly appointed) of _____, the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by authority of the board of directors of said corporation.

Notary Public Signature