

## Attachment 4 Contractor's Insurance Requirements

**Note: Bidders are advised to provide this Attachment to their insurance agent/broker in order to confirm the Bidder's coverage meets these requirements. Failure to meet the required insurance coverage levels may result in the rejection of the bid.**

### **CONTRACTOR'S INSURANCE REQUIREMENTS**

The Contractor shall deliver to OGS evidence of the coverage required by this Section in a form that is acceptable to OGS (i.e., a certificate of insurance that is promulgated by the insurer issuing the policy referenced in the certificate of insurance or a standard certificate of insurance form issued by an industry standard-setting organization and approved for use by the Superintendent of the New York State Department of Financial Services or any other form approved for use by the Superintendent of the New York State Department of Financial. These policies must be written in accordance with the requirements of the paragraphs below, as applicable. Acceptance and/or approval by OGS does not and shall not be construed to relieve the Contractor of any obligations, responsibilities or liabilities under this Contract.

- I. **General Conditions Applicable to Insurance.** All policies of insurance required by this Contract must meet the following requirements:
  - A. **Coverage Types and Policy Limits.** The types of coverage and policy limits required from the Contractor are specified in Paragraph II Insurance Requirements below.
  - B. **Policy Forms.** Except as may be otherwise specifically provided herein or agreed to in writing by OGS, policies must be written on an occurrence basis.
  - C. **Evidence of Insurance (Certificates, Amendatory Endorsements, Schedules of Forms and Endorsements and all Forms and Endorsements).** The Contractor shall provide OGS with a Certificate or Certificates of Insurance and all required endorsements prior to this Contract taking effect, and within three (3) business days of request.
    1. Requested documentation shall reference the New York State Contract Number.
    2. **ALL OF THE REFERENCED FORMS, EXCEPT CE-200, SI-12 & DB-155 MUST NAME:** The New York State Office of General Services, New York State Procurement Services (Procurement Services), 38th floor, Corning Tower, Albany NY 12242 as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder).
    3. Documentation shall be submitted to:

The New York State Office of General Services  
New York State Procurement Services  
Corning Tower- 38th Floor  
Empire State Plaza  
Albany, NY 12242
    4. Unless otherwise agreed, policies shall be written so as to include a provision that the policy will not be canceled, materially changed, or not renewed without at least thirty (30) days' prior, written notice except for non-payment, in which case, notice shall be provided as required by law to OGS, Attention: Procurement Services, Corning Tower – 38<sup>th</sup> Floor, Empire State Plaza, Albany, New York 12242. The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect. Not less than ten (10) days' after the expiration date or renewal date, the Contractor shall supply OGS updated replacement evidence of coverage.
    5. Evidence of Insurance shall:

- a. Be in the form acceptable to OGS (i.e., a certificate of insurance that is promulgated by the insurer issuing the policy referenced in the certificate of insurance or a standard certificate of insurance form issued by an industry standard-setting organization and approved for use by the Superintendent of the New York State Department of Financial Services or any other form approved for use by the Superintendent of the New York State Department of Financial Services;
  - b. Disclose any deductibles, self-insured retentions, aggregate limits or any exclusions to the policy that materially change the coverage required by this Contract;
  - c. Specify the Additional Insureds and Named Insured as required herein;
  - d. Refer to this Contract by its New York State Contract Number and any other attachments on the face of the certificate; and,
  - e. Be signed by an authorized representative of the insurance carrier or producer.
6. Only original documents or electronic forms that can be directly traced back to the insurance carrier, agent or broker via e-mail distribution will be accepted.
- D. **Primary Coverage.** All insurance policies shall provide that the required coverage shall apply on a primary and not on an excess or contributing basis as to any other insurance that may be available to OGS or any Authorized User for any claim arising from the Contractor's work under this Contract, or as a result of the Contractor's activities. Any other insurance maintained by OGS or any Authorized User shall be excess of and shall not contribute with the Contractor's insurance.
- E. **Policy Renewal/Expiration.** Within ten (10) days' of the expiration of any policy required by this Contract, evidence of renewal or replacement policies of insurance with terms no less favorable to the State than the expiring policies shall be delivered to OGS in the manner required for service of notice in Paragraph I.C. Evidence of Insurance (Certificates, Amendatory Endorsements, Schedules of Forms and Endorsements and all Forms and Endorsements) above. If, at any time during the term of this Contract, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this Contract, or proof thereof is not provided to OGS, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by OGS. Should the Contractor fail to provide or maintain any insurance required by this Contract, or proof thereof is not provided, OGS or Authorized Users may withhold further payments due under this Contract or treat such failure as a breach or default of this Contract. In the event of such a breach, the Contractor shall be subject to liability for damages, indemnification and all other legal remedies available to OGS. The Contractor's failure to obtain and/or keep in effect any and all required insurance shall also provide the basis for OGS' immediate termination of this Contract, subject only to a five (5) business day cure period. Any termination by OGS or any delay, time lost or additional cost incurred as a result of the Contractor not having insurance required by this Contract or not providing proof of same in a form acceptable to OGS, shall in no event constitute or be deemed a breach of this Contract and no liability shall be incurred or arise against OGS or any Authorized User, its agents and employees therefrom for lost profits or any other damages.
- F. **Self-Insured Retention/Deductibles.** Certificates of Insurance must indicate deductibles or self-insured retentions above \$100,000. Such deductibles or self-insured retentions are subject to approval from OGS, which shall not be unreasonably, withheld, conditioned or delayed. The Contractor shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retention.
- G. **Subcontractors.** Should the Contractor engage a Subcontractor, the Contractor shall require all Subcontractors, prior to commencement of an agreement between Contractor and the Subcontractor, to secure and keep in force during the term of this Contract the insurance requirements of this document on the Subcontractor, as applicable. Proof thereof shall be supplied to OGS.

All insurance required by this Contract excluding Workers' Compensation and Disability insurance shall name The People of the State of New York, The New York State Office of General Services and any entity authorized by law or regulation to use this Contract as an authorized user and their officers, agents, and employees as an additional insured as their interest may appear hereunder. The General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number CG 20 10 11 85 or the equivalent. Such coverage shall be extended to afford Additional Insured status to those entities during the Products/Completed Operations term. Additional Insured Endorsements shall be provided prior to execution of this Contract and within ten (10) business days of request to OGS, Procurement Services, Corning Tower – 38<sup>th</sup> Floor, Empire State Plaza, Albany, New York 12242.

**II. Insurance Requirements.** The Contractor, throughout the term of this Contract, or as otherwise required by this Contract, shall obtain and maintain in full force and effect, the following insurance with limits not less than those described below and as required by the terms of this Contract, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

**A. Commercial General Liability Insurance (CGL)** covering the liability of the Contractor for bodily injury, property damage and personal/advertising injury from all work and operation under this Contract. The limits under such policy shall not be less than the following:

1. Each Occurrence - \$1,000,000.00
2. General Aggregate - \$2,000,000.00
3. Products/Completed Operations Aggregate - \$2,000,000.00
4. Personal/Advertising Injury - \$1,000,000.00
5. Damage to Rented Premises - \$50,000.00
6. Medical Expenses - \$5,000.00

Coverage shall include, but not be limited to, the following:

- a. premises liability;
- b. independent contractors;
- c. blanket contractual liability, including tort liability of another assumed in a contract;
- d. defense and/or indemnification obligations, including obligations assumed under this Contract;
- e. cross liability for additional insureds;
- f. products/completed operations for a term of no less than three (3) years, commencing upon acceptance of the work, as required by this Contract; and
- g. explosion, collapse, and underground hazards; and, contractor means and methods.

Aggregate limits shall apply on a per location or per project basis, as applicable.

The coverage shall be written on the current edition of ISO occurrence form CG 00 01 and the following ISO forms must be endorsed to the policy:

- a. CG 20 10 11 85 or an equivalent – Additional Insured-Owner, Lessees or Contractors (Form B)
- b. Waiver of Subrogation

**B. Comprehensive Business Automobile Liability Insurance** covering liability arising out of the use of any automobile in connection with the work required under this Contract, including owned, leased, hired and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear, license plates. Such policy shall have a combined single limit for Bodily Injury and Property Damage of at least \$2,000,000.00 each accident and shall name The People of the State of New York, The New York State Office of General Services, any entity authorized by law or regulation to utilize this Contract as an Authorized User and their officers, agents, and employees as additional insureds. The limits may be provided through a combination of primary and umbrella liability policies. If the contract involves the removal of hazardous waste from the project site or otherwise transporting hazardous materials, pollution liability coverage for covered autos shall be provided by form CA 99 48 03 06 or CA 00 12 03 06 and the Motor Carrier Act Endorsement (MCS90) shall be attached.

In the event that the Contractor does not own, lease, or hire any vehicles to fulfill the requirements of this Contract, the Contractor must attest to that fact and does not need to obtain business automobile liability insurance. If, however, during the term of this Contract, the Contractor acquires, leases, or hires a vehicle that will be used to fulfill the requirements of this Contract, the Contractor must immediately obtain business automobile liability insurance that meets all of the requirements set forth in this Contract and provide evidence of such coverage no more than 10 days following the date automobile liability insurance coverage is bound.

**C. Environmental Liability Insurance.** If the work involves abatement, removal, repair, replacement, enclosure, encapsulation and/or disposal of any pollutants, which includes but are not limited to, petroleum, petroleum product, hazardous material or substance including asbestos, lead, fungus and

those as defined by applicable state and federal laws and regulations, the Contractor shall procure, or otherwise obtain through an approved subcontractor, and maintain in full force and effect throughout the term of the Contract, and for two years after completion hereof, pollution legal liability insurance with limits not less than \$10,000,000.00, providing coverage for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured. Such policy shall provide coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit or proceedings against the State, OGS or any authorized user arising from the Contractor's work. The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use any Contract resulting from this solicitation as an Authorized User and their officers, agents, and employees as additional insureds and the coverage shall be primary. This requirement applies to mold as well, if excluded in the Commercial General Liability policy.

If automobiles are to be used for transporting hazardous materials, the Contractor shall provide pollution liability broadened coverage for covered autos (endorsement CA 99 48 03 06 or CA 00 12 03 06) as well as proof of MCS 90.

**Waiver of Subrogation.** For the coverages required above, the Contractor shall cause to be included in each of its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against The People of the State of New York, The New York State Office of General Services and any entity authorized by law or regulation to use this Contract as an authorized user and their officers, agents, and employees. Waiver of Subrogation Endorsements shall be provided prior to this Contract taking effect and within three (3) business days of request to OGS, Procurement Services, Corning Tower- 38th Floor, Empire State Plaza, Albany, NY 12242.

### III. Workers' Compensation Insurance and Disability Benefits Requirements

New York State Workers' Compensation Law (WCL) §57 & §220 requires the heads of all municipal and state entities to ensure that businesses applying for permits, licenses or contracts document that they have appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals, whether the governmental agency is having the work done or is simply issuing the permit, license or contract. Failure to provide proof of such coverage or a legal exemption will result in the Contractor not being considered for this Contract or renewal of same.

#### A. **Proof of Compliance with Workers' Compensation Coverage Requirements: An ACORD form is NOT acceptable proof of workers' compensation coverage.**

1. In order to provide proof of compliance with the requirements of the New York State Workers' Compensation Law pertaining to workers' compensation coverage, a contractor shall:
  - a. Be legally exempt from obtaining Workers' Compensation insurance coverage; or
  - b. Obtain such coverage from an insurance carrier; or
  - c. Be a Workers' Compensation Board-approved self-insured employer or participate in an authorized self-insurance plan.
2. The Contractor shall provide one of the following forms to the Office of General Services **before this Contract can be executed by the Commissioner.**
  - a. Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website ([www.wcb.ny.gov](http://www.wcb.ny.gov)).
  - b. Certificate of Workers' Compensation Insurance:
    - i. Form C-105.2 (9/07) if coverage is provided by the Contractor's insurance carrier, the Contractor must request its carrier to send this form to the New York State Office of General Services, or
    - ii. Form U-26.3 if coverage is provided by the State Insurance Fund, the Contractor must

request that the State Insurance Fund send this form to the New York State Office of General Services.

- c. Form SI-12, Certificate of Workers' Compensation Self-Insurance available from the New York State Workers' Compensation Board's Self-Insurance Office.
- d. Form GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance available from the Contractor's Group Self-Insurance Administrator.

**B. Proof of Compliance with Disability Benefits Coverage Requirements:**

- 1. In order to provide proof of compliance with the requirements of the New York State Workers' Compensation Law pertaining to disability benefits, a contractor shall:
  - a. Be legally exempt from obtaining disability benefits coverage; or
  - b. Obtain such coverage from an insurance carrier; or
  - c. Be a Board-approved self-insured employer.
- 2. The Contractor shall provide one of the following forms to the Office of General Services **before this Contract can be executed by the Commissioner.**
  - a. Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website ([www.wcb.ny.gov](http://www.wcb.ny.gov)).
  - b. Form DB-120.1, Certificate of Disability Benefits Insurance. The Contractor must request its business insurance carrier to send this form to the New York State Office of General Services; or
  - c. Form DB-155, Certificate of Disability Benefits Self-Insurance. The Contractor must call the Board's Self-Insurance Office at 518-402-0247 to obtain this form.