

## Attachment 5

### Insurance Requirements

Unless otherwise noted below, upon tentative award, following Phase 2, the tentative Contractor shall be required to procure at its sole cost and expense all required insurance. The tentative Contractor shall procure at its sole cost and expense, and shall maintain in force at all times during the term of any Contract resulting from this solicitation, policies of insurance as herein below set forth, written by companies licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York with an A.M. Best Company rating of “A-” Class “VII” or better. If during the term of the policy, a carrier’s rating falls below “A-” Class “VII”, the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to the New York State Office of General Services (“OGS”) and rated at least “A-” Class “VII” in the most recently published Best’s Insurance Report.

The tentative Contractor shall deliver to OGS evidence of such policies in a form acceptable to OGS. 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 Qualified Bidder of any obligations, responsibilities or liabilities under any Contract resulting from this solicitation.

#### General Conditions

**A. Conditions Applicable to Insurance.** All policies of insurance required by any Contract resulting from this solicitation must meet the following requirements:

1. **Coverage Types and Policy Limits.** The types of coverage and policy limits required from the Bidder are specified in Paragraph B *Insurance Requirements* below.
2. **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.
3. **Certificates of Insurance/Notices.** The Qualified Bidder/Contractor shall provide a Certificate or Certificates of Insurance and all required endorsements, in a form satisfactory to OGS upon tentative award, following Phase 2, and within three (3) days of request. Certificates shall reference this solicitation and/or the Contract Number. **ALL OF THE REFERENCED FORMS, EXCEPT CE-200, SI-12 & DB-155 MUST NAME:** The New York State Office of General Services, Procurement Services, 38th floor, Corning Tower, Albany NY 12242 as the Entity Requesting Proof of Coverage (Entity being listed as the Certificate Holder). Certificates shall be submitted to the New York State Office of General Services, New York State Procurement (Procurement Services), Corning Tower-38<sup>th</sup> Floor, Empire State Plaza, Albany, New York 12242.

Policies shall be written so as to include the requirements for notice of cancellation contained in the New York State Insurance Law. The Contractor shall supply OGS with a copy of any written notice of cancellation or non-renewal received from an insurer along with proof of replacement Certificates of Insurance and amendatory endorsements within ten (10) business days of receipt.

Certificates of Insurance shall:

- a. Be in the form approved by OGS;
- b. Disclose any deductible, self-insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by this solicitation or any Contract resulting from this solicitation;
- c. Specify the Additional Insured and Named Insured as required herein;
- d. Refer to this solicitation or any Contract resulting from this solicitation by 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.

Only original documents or electronic forms that can be directly traced back to the insurance carrier, agent or broker via e-mail distribution (Certificates of Insurance and other attachments) will be accepted.

4. **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 Bidder's work under any Contract resulting from this solicitation, or as a result of the Bidder's activities. Any other insurance maintained by OGS or any Authorized User shall be excess of and shall not contribute with the Bidder's insurance.
5. **Policy Renewal/Expiration.** Within thirty (30) days after renewal or replacement of any policy required by any Contract resulting from this solicitation, or within three (3) business days of request, 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 A.3. *Certificates of Insurance/Notices* above. If, at any time during the term of any Contract resulting from this solicitation, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this solicitation or any Contract resulting from this solicitation 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 solicitation or any Contract resulting from this solicitation, or proof thereof is not provided, OGS or Authorized Users may withhold further payments due under any Contract resulting from this solicitation, treat such failure as a breach or default of the any Contract resulting from this solicitation. In the event of such a material breach, the Contractor shall be subject to liability for damages, indemnification and all other legal remedies available to OGS. Contractor failure to obtain and/or keep in effect any and all required insurance shall also provide the basis for OGS' immediate termination of any Contract resulting from this solicitation, 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 solicitation or any Contract resulting from this solicitation or not providing proof of same in a form acceptable to OGS, shall in no event constitute or be deemed a breach of any Contract resulting from this solicitation and no liability shall be incurred by or arise against OGS or any Authorized User, their agents and employees therefore for lost profits or any other damages.
6. **Self-Insured Retention/Deductibles.** Certificates of Insurance must indicate the applicable deductible/self insured retention on each policy. Deductibles or self-insured retentions above \$100,000 are subject to approval from OGS. The Qualified Bidder/Contractor shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retention.
7. **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 any Contract resulting from this solicitation the insurance requirements of this document on the Subcontractor, as applicable. Proof thereof shall be supplied to OGS.

All insurance required by this solicitation or any Contract resulting from this solicitation shall name The People of the State of New York, its officers, agents, and employees and the New York State Office of General Services as additional insureds 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 Operation term. Additional Insured Endorsements shall be provided upon tentative award and within five (5) business days of request to OGS, Procurement Services, Corning Tower-38<sup>th</sup> Floor, Empire State Plaza, Albany, New York 12242. The additional insured requirement does not apply to Workers' Compensation, Disability or Professional Liability coverage.

**B. Insurance Requirements:** The Contractor, throughout the term of any Contract resulting from this solicitation, or as otherwise required by any Contract resulting from this solicitation, 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 solicitation or any Contract resulting from this solicitation, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

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

- Each Occurrence Limit \$2,000,000
- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$2,000,000
- Personal and Advertising Injury \$1,000,000
- Damage to Rented Premises \$50,000.00
- Medical Expense \$5,000.00

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

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

The following ISO forms must be endorsed to the policy:

- a. CG 00 01 01 96 or an equivalent – Commercial General Liability Coverage Form
- b. CG 20 10 11 85 or an equivalent – Additional Insured-Owner, Lessees or Contractors (Form B)
- c. Waiver of Subrogation Endorsement

**2. Comprehensive Business Automobile Liability Insurance** covering liability arising out of any automobile in connection with the work required under the agreement between the Contractor and OGS, 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 the 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 agreement between the Contractor and OGS 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 the Contract, the Contractor must attest to that fact and does not need to obtain business automobile liability insurance. If, however, during the term of the Contract, the Contractor acquires, leases, or hires a vehicle that will be used to fulfill the requirements of the Contract, the Contractor must obtain business automobile liability insurance that meets all of the requirements set forth in the Contract and provide evidence of such coverage no more than 10 days following the date automobile liability insurance coverage is bound.

**Waiver of Subrogation.** For the coverages required above, the Contractor shall cause to be included in each of its policies a waiver of the insurer's right to recovery or subrogation against the People of the State of New York, its officers, agents, and employees, the New York State Office of General Services and any Authorized User of any Contract resulting from this solicitation. Waiver of Subrogation Endorsements shall be provided upon tentative award and within three (3) days of request to OGS, Procurement Services, Corning Tower- 38th Floor, Empire State Plaza, Albany, NY 12242.

**C. 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 a rejection of your bid or renewal.

**1. Proof of Compliance with Workers' Compensation Coverage Requirements:**

**An ACORD form is NOT acceptable proof of workers' compensation coverage.** 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.

A Bidder seeking to enter into a Contract with the State of New York shall provide one of the following forms to OGS **at the time of bid submission during Phase 1:**

- 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 New York State Workers' Compensation Board's website ([www.wcb.ny.gov](http://www.wcb.ny.gov)); (Reference applicable solicitation and Group #s on the form.)
- b. Certificate of Workers' Compensation Insurance:
  - 1) Form C-105.2 (9/07) if coverage is provided by a Bidder's insurance carrier, Bidder must request its carrier to send this form to the New York State Office of General Services, or
  - 2) Form U-26.3 if coverage is provided by the State Insurance Fund, a Bidder must request that the State Insurance Fund send this form to OGS.
- 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 Bidder's Group Self-Insurance Administrator.

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

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.

A Bidder seeking to enter into a Contract with the State of New York shall provide one of the following forms to OGS **at the time of bid submission during Phase 1:**

- 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 New York State Workers' Compensation Board's website ([www.wcb.ny.gov](http://www.wcb.ny.gov)); (Reference applicable solicitation and Group #s on the form.)
- b. Form DB-120.1, Certificate of Disability Benefits Insurance. A Bidder 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. A Bidder must call the Board's Self-Insurance Office at 518-402-0247 to obtain this form.