

## Attachment 4

# Insurance Requirements

The Bidder shall be required to procure, at its sole cost and expense, all insurance required by this section.

The Bidder shall be required to provide proof of compliance with the requirements of this section, as follows:

- Proof of NYS Workers' Compensation and Disability Benefits Insurance shall be provided at the time of bid submission;
- Proof of all other insurance shall be provided in accordance with Section B below;
- After award, the Contractor shall be required to provide proof of all insurance after renewal or upon request according to the timelines set forth in Section A.13 below.

Contractors shall be required to procure, at their 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 required by this section. All insurance shall be written by companies licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York and which have an A.M. Best Company rating of "A-" Class "VII" or better. OGS may, in its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when certificates and/or other policy documents are accompanied by a completed Excess Lines Association of New York (ELANY) affidavit or other documents demonstrating the company's strong financial rating. If, during the term of a 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 insurance that meets the requirements above.

Bidders and Contractors shall deliver to OGS evidence of the insurance required by this solicitation and any Contract resulting from this solicitation in a form satisfactory to OGS. Policies must be written in accordance with the requirements of the paragraphs below, as applicable. While acceptance of insurance documentation shall not be unreasonably withheld, conditioned or delayed, acceptance and/or approval by OGS does not, and shall not be construed to, relieve Bidder or Contractors of any obligations, responsibilities or liabilities under this solicitation or any Contract resulting from this solicitation.

### General Conditions

**A. *Conditions Applicable to Insurance.*** All policies of insurance required by this solicitation or 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 Bidders and Contractors are specified in Paragraph B *Insurance Requirements* below.
2. ***Policy Forms.*** Except as otherwise specifically provided herein, or agreed to in writing by OGS, policies must be written on an occurrence basis.
3. ***Certificates of Insurance/Notices.*** Bidders and Contractors shall provide a Certificate or Certificates of Insurance, in a form satisfactory to OGS as detailed below, and pursuant to the timelines set forth in Section B below. Certificates shall reference the Solicitation or Contract Number and shall name the New York State Office of General Services, Procurement Services, 38<sup>th</sup> Floor, Corning Tower, Albany, New York 12242 as the Certificate Holder. Certificates shall be submitted to the New York State Office of General Services, Procurement Services, Corning Tower- 38th Floor, Empire State Plaza, Albany, NY 12242 as the certificate holder.

Certificates of Insurance shall:

- Be in the form acceptable to OGS and in accordance with the New York State Insurance Law (i.e.: an Aford certificate);
- Disclose any deductible, self-insured retention, aggregate limit or exclusion to the policy that materially changes the coverage required by this solicitation or any Contract resulting from this solicitation;
- Be accompanied by an Additional Insured Endorsement as required herein;

- Refer to this solicitation and any Contract resulting from this solicitation by number and any other attachments on the face of the certificate;
- Be signed by an authorized representative of the referenced insurance carrier; and
- Contain the following language in the Description of Operations / Locations / Vehicles section: 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 the Contract and their officers, agents, and employees are included as an additional insured on endorsement CG 20 10 11 85 (or endorsements that provide equivalent coverage, such as the combination of CG 20 10 04 13 (covering ongoing operations) and CG 20 37 04 13 (covering completed operations)), and General liability coverage is provided on the current edition of Commercial General Liability Coverage Form CG 00 01 (or a form that provides equivalent coverage). Additional insured protection afforded is on a primary and non-contributory basis. A waiver of subrogation is granted in favor of the additional insureds.

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

OGS generally requires Contractors to submit only certificates of insurance and additional insured endorsements, although OGS reserves the right to request other proof of insurance. Contractors are requested to refrain from submitting entire insurance policies, unless specifically requested by OGS. If an entire insurance policy is submitted but not requested, OGS shall not be obligated to review and shall not be chargeable with knowledge of its contents. In addition, submission of an entire insurance policy not requested by OGS does not constitute proof of compliance with the insurance requirements and does not discharge Contractors from submitting the requested insurance documentation.

4. **Primary Coverage.** All insurance policies shall provide that the required coverage shall apply on a primary and non-contributing to other insurance that may be available to The People of the State of New York, Office of General Services, or any other entity authorized by law or regulation to use the Contract and their officers, agents, and employees and shall not contribute with the Bidder's/Contractor's insurance.
5. **Breach for Lack of Proof of Coverage.** The failure to comply with the requirements of this Appendix at any time during the term of any Contract resulting from this Solicitation shall be considered a breach of the terms of the Contract and shall allow 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 the Contract resulting from this solicitation and their officers, agents, and employees to avail themselves of all remedies available under the Contract or at law or in equity.
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, which shall not be unreasonably withheld, conditioned or delayed. Bidders and Contractors shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retention. If the Bidder/Contractor is providing the required insurance through self-insurance, evidence of the financial capacity to support the self-insurance program along with a description of that program, including, but not limited to, information regarding the use of a third-party administrator shall be provided upon request.
7. **Subcontractors.** Prior to commencement of any work by a Subcontractor, the Contractor shall require such Subcontractor to procure policies of insurance as required by this section and maintain the same in force during the term of any work performed by the Subcontractor.
8. **Waiver of Subrogation.** For the Commercial General Liability Insurance and Business Automobile Liability Insurance required below, 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 insurers right of subrogation against OGS, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if Contractor waives or has waived before the casualty, the right of recovery against OGS or (ii) any other form of permission for the release of OGS. A Waiver of Subrogation Endorsement shall be provided upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.

9. ***Additional Insured.*** For the Commercial General Liability Insurance and Business Automobile Liability Insurance required below, the Contractor shall cause to be included in each of its policies ISO form CG 20 10 11 85 (or a form or forms that provide equivalent coverage, such as the combination of CG 20 10 04 13 and CG 20 37 04 13) and form CA 20 48 10 13 (or a form or forms that provide equivalent coverage) naming as additional insureds: 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 the Contract and their officers, agents, and employees. An Additional Insured Endorsement evidencing such coverage shall be provided to OGS pursuant to the timelines set forth in Section B below. A blanket Additional Insured Endorsement evidencing such coverage is also acceptable. For Contractors who are self-insured, Contractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that Contractor would have been required to pursuant to this section had Contractor obtained such insurance policies.

As clarification, “The People of the State of New York” means the State of New York and its subsidiary governmental entities. This is the name in which the State, as a governmental entity, enters into contracts, takes title to property, and initiates legal actions. Using the term “People” does not mean that the insurer is insuring all residents of New York State; rather, it means that the State government is being insured.

10. ***Excess/Umbrella Liability Policies.*** Required insurance coverage limits may be provided through a combination of primary and excess/umbrella liability policies. If coverage limits are provided through excess/umbrella liability policies, then a Schedule of underlying insurance listing policy information for all underlying insurance policies (insurer, policy number, policy term, coverage and limits of insurance), including proof that the excess/umbrella insurance follows form must be provided upon request.
11. ***Notice of Cancellation or Non-Renewal.*** Policies shall be written so as to include the statutory cancellation notice provisions contained in the New York State Insurance Law. Contractors shall provide OGS a copy of any written notice of cancellation or non-renewal received from their insurer(s) within ten (10) business days of receipt.

Bidders and Contractors 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. 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, Bidders and Contractors shall supply OGS with updated replacement Certificates of Insurance, and amendatory endorsements.

12. ***Policy Renewal/Expiration*** Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the insurance requirements set forth in this solicitation and any Contract resulting from this solicitation shall be delivered to OGS. 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.
13. ***Deadlines for Providing Insurance Documents after Renewal or Upon Request.*** As set forth herein, certain insurance documents must be provided to the OGS Procurement Services contact identified in the Contract Award Notification after renewal or upon request. This requirement means that the Contractor shall provide the applicable insurance document to OGS as soon as possible but in no event later than the following time periods:
- For certificates of insurance: 5 business days
  - For information on self-insurance or self-retention programs: 15 calendar days
  - For other requested documentation evidencing coverage: 15 calendar days
  - For additional insured and waiver of subrogation endorsements: 30 calendar days

Notwithstanding the foregoing, if the Contractor shall have promptly requested the insurance documents from its broker or insurer and shall have thereafter diligently taken all steps necessary to obtain such documents from its insurer and submit them to OGS, OGS shall extend the time period for a reasonable period under the circumstances, but in no event shall the extension exceed 30 calendar days.

**B. Insurance Requirements:** Bidders and Contractors shall obtain and maintain in full force and effect, throughout the term of any Contract resulting from this solicitation, at their own expense, the following insurance with limits not less than those described below, or as required by law, whichever is greater:

Insurance Type		Proof of Coverage is Due
<b>Commercial General Liability</b>	Not less than \$1,000,000 each occurrence	At time of bid submission
Personal and Advertising Injury	\$1,000,000	
General Aggregate	\$2,000,000	
Products – Completed Operations Aggregate	\$2,000,000	
<b>Business Automobile Liability Insurance</b>	Not less than \$2,000,000 each occurrence	
<b>Workers' Compensation</b>		
<b>Disability Benefits</b>		

- 1. Commercial General Liability Insurance:** Such liability shall be written on the current edition of ISO occurrence form CG 00 01, or a substitute form providing equivalent coverage and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage.

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- Personal and Advertising Injury
- General Aggregate
- Products – Completed Operations Aggregate

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

- Premises liability;
- Independent contractors;
- Blanket contractual liability, including tort liability of another assumed in a contract;
- Defense and/or indemnification obligations, including obligations assumed under this contract;
- Cross liability for additional insureds;
- Products/completed operations for a term of no less than one (1) year, commencing upon acceptance of the work, as required by the contract; and
- Explosion, collapse and underground hazards.

- 2. Comprehensive Business Automobile Liability Insurance** covering liability arising out of any automobile in connection with performance under the Contract 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.

In the event that the Contractor does not own, lease or hire any automobiles used in connection with performance under the Contract, the Contractor does not need to obtain Business Automobile Liability Insurance, but must attest to the fact that the Contractor does not own, lease or hire any automobiles used in connection with performance under the Contract on a form provided by OGS. If, however, during the term of the Contract, the Contractor acquires, leases or hires any automobiles that will be used in connection with performance under the Contract, the Contractor must obtain Business Automobile Liability Insurance that meets all of the requirements of this section and provide proof of such coverage to OGS in accordance with the insurance requirements of any Contract resulting from this solicitation.

In the event that the Contractor does not own or lease any automobiles used in connection with performance under the Contract, but the Contractor does hire and/or utilize non-owned automobiles in connection with performance under the Contract, the Contractor must: (i) obtain Business Automobile Liability Insurance as required by this solicitation or any Contract resulting from this solicitation, except that such insurance may be limited to liability arising out of hired and/or non-owned automobiles, as applicable; and (ii) attest to the

fact that the Contractor does not own or lease any automobiles used in connection with performance under the Contract, on a form provided by OGS. If, however, during the term of the Contract, the Contractor acquires or leases any automobiles that will be used in connection with performance under the Contract, the Contractor must obtain Business Automobile Liability Insurance that meets all of the requirements of this section and provide proof of such coverage to OGS in accordance with the insurance requirements of any Contract resulting from this solicitation.

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

Sections 57 and 220 of the New York State Workers' Compensation Law require the heads of all municipal and state entities to ensure that businesses applying for contracts have appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals. **Failure to provide proper proof of such coverage or a legal exemption will result in a rejection of a Proposal or any contract renewal. An Offeror may not be awarded a Contract unless proof of workers' compensation and disability insurance is provided to OGS.** Proof of workers' compensation and disability benefits coverage, or proof of exemption must be submitted to OGS at the time of Proposal submission, policy renewal, contract renewal, and upon request. Proof of compliance must be submitted on one of the following forms designated by the New York State Workers' Compensation Board. **An ACORD form is not acceptable proof of New York State workers' compensation or disability benefits insurance coverage.**

Proof of Compliance with Workers' Compensation Coverage Requirements:

- 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));
- Form C-105.2 (9/07), *Certificate of Workers' Compensation Insurance*, sent to OGS by the Contractor's insurance carrier upon request, or if coverage is provided by the New York State Insurance Fund, they will provide Form U-26.3 to OGS upon request from the Contractor; or
- Form SI-12, *Certificate of Workers' Compensation Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance Office, or
- Form GSI-105.2, *Certificate of Participation in Workers' Compensation Group Self-Insurance*, available from the Contractor's Group Self-Insurance Administrator.

Proof of Compliance with Disability Benefits Coverage Requirements:

- 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));
- Form DB-120.1, *Certificate of Disability Benefits Insurance*, sent to OGS by the Contractor's insurance carrier upon request; or
- Form DB-155, *Certificate of Disability Benefits Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance Office.

An instruction manual clarifying the New York State Workers' Compensation Law requirements is available for download at the New York State Workers' Compensation Board's website, <http://www.wcb.ny.gov>. Once on the site, click on the Employers/Businesses tab and then click on Employers' Handbook.