

State of New York Executive Department  
Office Of General Services  
New York State Procurement  
Corning Tower Building - 38th Floor  
Empire State Plaza  
Albany, New York 12242  
<http://www.ogs.ny.gov>

## CONTRACT AWARD NOTIFICATION

<b>Title</b>	<b>:</b>	<b>Group 38602 - GLASS SPHERES FOR REFLECTORIZED PAVEMENT MARKING (Various Types) (Statewide)</b> Classification Code(s): 73
<b>Award Number</b>	<b>:</b>	<b>21869-RA</b> (Replaces Award 20056)
<b>Contract Period</b>	<b>:</b>	<b>April 23, 2010 to December 31, 2014</b>
<b>Bid Opening Date</b>	<b>:</b>	<b>October 1, 2009</b>
<b>Date of Issue</b>	<b>:</b>	<b>April 23, 2010</b> <b>REVISED – December 31, 2014</b>
<b>Specification Reference</b>	<b>:</b>	<b>As Incorporated In The Invitation for Bids, Purchasing Memorandum 21869p1, dated September 24, 2009 &amp; Purchasing Memorandum 21869p2, dated September 28, 2009</b>
<b>Contractor Information</b>	<b>:</b>	<b>Appears on Page 2 of this Award</b>

### Address Inquiries To:

State Agencies & Vendors	Political Subdivisions & Others
Name : James E. Malone, CPPB Title : Purchasing Officer 1 Phone : 518-473-2428 Fax : 518-474-8676 E-mail : James.Malone@ogs.ny.gov	New York State Procurement Customer Services Phone : 518-474-6717 Fax : 518-474-2437 E-mail : customer.services@ogs.ny.gov

**The New York State Procurement values your input.  
Complete and return "Contract Performance Report" at end of document.**

### Description

Glass spheres are used as an additive to traffic paint for producing reflective roadway stripes for improved visibility and traffic safety.

**This revision extends the contract for one year through December 31, 2014 and updates the name and address for Potters Industries, LLC.**

**CONTRACTOR LISTING**

**NOTE: See the individual contract line items to determine actual awards.**

<b>CONTRACT #</b>	<b>CONTRACTOR &amp; ADDRESS</b>	<b>TELEPHONE # &amp; Additional Contact Information</b>	<b>FED. IDENT. #</b>
<b>PC65088</b>	<b>Potters Industries, LLC</b> P. O. Box 841 Valley Forge, PA 19482	(610) 651-4714 (800) 552-3237 - Toll Free (610) 408-9723 - Fax  Yvonne Harris, Contract Administrator yvonne.harris@pottersbeads.com www.pottersbeads.com	221933307
	Contractor accepts N.Y.S. Procurement Card for purchases up to \$15,000.00 Contractor also offers Electronic Access Ordering (EDI)		
<b>PC65089</b>	<b>Weissker Manufacturing, LLC</b> P. O. Box 105 Carbondale, PA, 18407	(570) 267-0015 (866) 998-0050 - Toll Free (570) 267-0019 - Fax  Mike Muta, Treasurer mike.muta@weissker.com www.weissker.com	680677625

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

**INVOICES MUST BE SENT DIRECTLY TO THE ORDERING AGENCY FOR PAYMENT.**  
 (See "Contract Payments" and "Electronic Payments" in this document.)

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

**SMALL, MINORITY AND WOMEN-OWNED BUSINESSES:**

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

**RECYCLED, REMANUFACTURED AND ENERGY EFFICIENT PRODUCTS:**

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

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

(continued)

**NOTE TO AUTHORIZED USERS:**

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

The authorized user, when purchasing from OGS contracts, should hold the contractor accountable for contract compliance and meeting the contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, authorized users are encouraged to seek improved pricing whenever possible.

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

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

**DEBRIEFING:**

Contractors and bidders are accorded fair and equal treatment with respect to the opportunity for debriefing. OGS shall, upon request, provide a debriefing to any bidder or awarded contractor that responded to the IFB or RFP regarding the reason that the proposal or bid submitted by the unsuccessful bidder was not selected for a contract award. The post award debriefing should be requested by the bidder or awarded contractor within thirty days of posting of the contract award on the OGS website.

**NYSPRO'S DISPUTE RESOLUTION POLICY:**

It is the policy of the Office of General Services' New York State Procurement (NYSPRO) to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to NYSPRO bid solicitations or contract awards. NYSPRO encourages vendors to seek resolution of disputes through consultation with NYSPRO staff. All such matters will be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of NYSPRO's Dispute Resolution Procedures for Vendors may be obtained by contacting the person shown on the front of this document or through the OGS website ([www.ogs.ny.gov](http://www.ogs.ny.gov)).

**ELECTRONIC PAYMENTS:**

The Office of the State Comptroller (OSC) offers an "electronic payment" option in lieu of issuing checks. To obtain an electronic payment authorization form visit the OSC website at [www.osc.state.ny.us](http://www.osc.state.ny.us) or contact them by e-mail at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us) or by phone at 518-474-4032.

**NOTE TO CONTRACTOR:**

This Contract Award Notification is not an order. Do not take any action under this contract except on the basis of purchase order(s) from the agency or agencies.

**REQUEST FOR CHANGE:**

Any request by the agency or contractor regarding changes in any part of the contract must be made in writing to the Office of General Services, New York State Procurement prior to effectuation.

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**PRICE:**

Price includes all customs duties and charges and be net, F.O.B. destination any point in New York State as designated by the ordering agency including unloading by agency forces.

Additional fees may be charged when delivery to point of use is not possible via dock, any other door, stairway or elevator. If special services are required, the purchaser shall pay the additional costs. Such costs shall be prepaid and added to the invoice. Agency will not be charged for delivery to building location since price is FOB destination; Purchaser must be informed of the additional cost prior to delivery and **MUST** agree to the additional charge.

**NOTE:** If it is determined the contractor is charging excessive amounts for specialized delivery, the State may seek reimbursement for such amounts, may remove the contractor from the list of eligible bidders, and may cancel the contract.

Contract prices for all LOTS are firm except that price adjustments will be made in accordance with the price adjustment clause shown herein, beginning below. In addition, upon mutual agreement, delivery locations may be expanded per the "Extension of Use Clause."

**SCHEDULED PRICE ADJUSTMENT:**

All contract pricing is subject to an increase or decrease after the first six (6) month period of the contract and every four months thereafter, with the initial adjustment occurring on July 1, 2010, or on the first day of the month following the initial six months of the contract should the Date of Issue of the contract award be later than Jan 1, 2010.

The price adjustment on each item will be commensurate with the increase or decrease of designated indices as described herein. Adjustment will be made to 85% of the total awarded price per item, and overall change must be greater than 2% for an adjustment to occur. All price adjustment calculations will be rounded off to the fourth decimal position.

Should any published figure in fact be preliminary, it will not be updated should a different figure replace it as permanent. Additional information on the Producer Price Index may be obtained at the U. S. Department of Labor website at: <http://data.bls.gov>

The adjustment for Glass Spheres produced for use on normal **Highway, Road and Street Surfaces** will be:

**40%** of the adjustable amount of awarded contract prices will be adjusted according to activity reported by the US Department of Labor, Producer Price Index (PPI) Commodity Data for Chemicals and allied products, other inorganic chemicals, Series ID: WPU06130283, not seasonally adjusted. The value will be the figure referenced on the day of record as most recently published for the current year, whether or not indicated a preliminary on the working day prior to the date of record.

**35%** of the adjustable amount of awarded contract prices will be adjusted according to activity on the New York Mercantile Exchange's Most Recent Settlement price for Natural Gas Futures based on supply through the Henry Hub for next calendar month deliveries as calculated every business day by the New York Mercantile Exchange and published on their website at [http://www.nymex.com/ng\\_fut\\_pso.aspx](http://www.nymex.com/ng_fut_pso.aspx) , at 3:00pm Eastern Time, three (3) business days prior to the first calendar day of the month of adjustment. The index adheres to the trading rules as set forth by the New York Mercantile Exchange.

**20%** of the adjustable amount of awarded contract prices will be adjusted according to activity reported by the US Department of Labor, Producer Price Index (PPI) Industry Data for Glass product mfg. made of purchased glass, Series ID: PCU327215327215P, not seasonally adjusted. The value will be the figure referenced on the day of record as most recently published for the current year, whether or not indicated a preliminary on the working day prior to the date of record.

**5%** of the adjustable amount of awarded contract prices will be adjusted according to activity reported by the US Department of Labor, Producer Price Index (PPI) Industry Data for General Freight Trucking PCU4841, not seasonally adjusted. The value will be the figure referenced on the day of record as most recently published for the current year, whether or not indicated a preliminary on the working day prior to the date of record.

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SCHEDULED PRICE ADJUSTMENT: (Continued)

The adjustment for Glass Spheres produced as **Airport Grade** use will be:

**50%** of the adjustable amount of awarded contract prices will be adjusted according to activity reported by the US Department of Labor, Producer Price Index (PPI) Commodity Data for Chemicals and allied products, Other inorganic chemicals - Series ID: WPU06130283., not seasonally adjusted. The value will be the figure referenced on the day of record as most recently published for the current year, whether or not indicated a preliminary on the working day prior to the date of record.

**35%** of the adjustable amount of awarded contract prices will be adjusted according to activity reported by the US Department of Labor, Producer Price Index (PPI) Industry Data for Glass Product Manufacturing pressed and blown glass and glassware, machine-made pressed and blown lighting, automotive, & electronic glass. Series ID: PCU 3272123272125, not seasonally adjusted. The value will be the figure referenced on the day of record as most recently published for the current year, whether or not indicated a preliminary on the working day prior to the date of record.

**10%** of the adjustable amount of awarded contract prices will be adjusted according to activity on the New York Mercantile Exchange's Most Recent Settlement price for Natural Gas Futures based on supply through the Henry Hub for next calendar month deliveries as calculated every business day by the New York Mercantile Exchange and published on their website at [http://www.nymex.com/ng\\_fut\\_pso.aspx](http://www.nymex.com/ng_fut_pso.aspx), at 3:00pm Eastern Time, three (3) business days prior to the first calendar day of the month of adjustment. The index adheres to the trading rules as set forth by the New York Mercantile Exchange.

**5%** of the adjustable amount of awarded contract prices will be adjusted according to activity reported by the US Department of Labor, Producer Price Index (PPI) Industry Data for General Freight Trucking, PCU4841, not seasonally adjusted. The value will be the figure referenced on the day of record as most recently published for the current year, whether or not indicated a preliminary on the working day prior to the date of record.

The basic price adjustment calculation process will be as follows:

1. Calculate Adjustable Amount: (Contract Price x 0.850)
2. Calculate the **Addend**: Item Price – Adjustable Amount = Addend
3. Calculate the **Individual Adjustable Factors** of the Line Items Adjustable Amount from line 1:  
ie.: Adjustable Amount x 0.40= Chemical & Allied Products Adjustable Amount  
Adjustable Amount x 0.35= Natural Gas Adjustable Amount  
Adjustable Amount x 0.20= Purchased Glass Adjustable Amount  
Adjustable Amount x 0.05= Freight Adjustable Amount
4. Calculate adjustment **Multipliers for each adjustment category**: Index values recorded per the above / Base Index = Multiplier. In the event index movement is indicative of a price reduction, the actual multiplier will equal: [1 - (The Current Index Value/ Base Index)].
5. Calculate **Individual Adjustment Values**:  
Individual Adjustment Factor X the Multiplier = Individual Adjustment Value
6. Calculate **Final Adjustment Amount** by adding together the Individual Adjustment Values
7. Calculate the **New Adjusted Price**:  
Final Adjustment Amount +/- Addend = New Adjusted Price
8. Calculate **Net Adjustment Percentage**:  
New Adjusted Price / Original Contract Price = Net Adjusted Percentage

The State will not effect any price adjustments, either increases or decreases, for net adjustment percentage changes of two percent (2%), or less.

If warranted a Purchasing Memorandum will then be issued by the New York State Procurement to reflect a price increase or decrease which will be effective on the first business day of the month beginning with the first of the month, six months from the first of the month following the date of issue of this award and every **four (4) months** thereafter for the term of the contract.

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**GROUP 38602 - GLASS SPHERES FOR REFLECTORIZED PAVEMENT MARKING AWARD PAGE 6  
(Various Types) (Statewide) REVISED – July 20, 2010**

**PRICE ADJUSTMENT BASE INDEX:**

Per the Price Adjustment Clause beginning on page 7 of the IFB, five statistical market indices will be used to determine if the items in any resultant contract should be subject to periodic adjustments of price over term of the contract. The following table identifies these indices along with the most recently published values as of September 24, 2009. These values are designated as the Base Index values, upon which future adjustments will be calculated:

Index Source	Index Description	Index Code	Designated Base Index
NYMEX Natural Gas - Futures	Most Recent Settlement Price as of 9/24/09	For October 2009 Sales	3.860
United States of America Department of Labor Bureau of Labor Statistics Producer Price Index	Chemical or Allied Products	WPU06130283	130.6
	Glass Products Manufacturing	PCU 3272123272125	115.5
	Glass product mfg. made of purchased glass	PCU327215327215P	140.8
	General Freight Trucking	PCU4841-- 4841--	118.3

These indices will remain constant through the term of the contract. Should the index be removed by NYMEX, or By the US Department of Labor, Bureau of Labor Statistics, the New York State Procurement of the NYS Office of General Services retains the right to select and implement a new index deemed appropriate of their choosing. In such instance the base would change to that of the new referenced index.

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**Product Classification A:  
Glass Spheres for ReflectORIZED Pavement Markings for Highway, Road and Street Use**

**Lot #1**

Item No.	Description	Original Awarded Price Per Pound	Revised Price Per Pound	Revised Package Price
<b>1.</b>	<b><u>Type I Glass Spheres (with Moisture Resistant Coating)</u> <u>For ReflectORIZED Pavement Marking complete as per specification</u></b>			
<b>A.</b>	<b>Full Truckload Quantity of 44,000 pounds or more:</b>			
	Packaged in 50 pound bags	\$0.24	\$0.2388	\$11.94
	Packaged in 2000 pound Cartons	\$0.24	\$0.2388	\$477.60
<b>B.</b>	<b>Less than Truckload Quantity of 22,000 to 43,950 pounds:</b>			
	Packaged in 50 pound bags	\$0.25	\$0.2488	\$12.4375
	Packaged in 2000 pound Cartons	\$0.25	\$0.2488	\$497.50
<b>C.</b>	<b>Less than Truckload Quantity of 10,000 to 21,950 pounds:</b>			
	Packaged in 50 pound bags	\$0.26	\$0.2587	\$12.935
	Packaged in 2000 pound Cartons	\$0.26	\$0.2587	\$517.40
<b><u>Lot # 1 – Awarded to Potters Industries, Inc.</u></b>				

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**Product Classification A:**

**Glass Spheres for ReflectORIZED Pavement Markings for Highway, Road and Street Use:** (Continued)

**LOT #2:**

Item No.	Description	Original Awarded Price Per Pound	Revised Price Per Pound	Revised Package Price
<b>2.</b>	<b>TYPE #2A and TYPE 2B SPHERES, FOR EPOXY REFLECTORIZED PAVEMENT MARKINGS - WET - NIGHT VISIBILITY SPHERES (with Silane-Type Adherence Coating) complete as per specifications</b>			
<b>A.</b>	<b>Full Truckload Quantity of 44,000 pounds or more:</b>			
	TYPE 2A - Packaged in 50 pound bags	\$0.49	\$0.4876	\$24.3775
	TYPE 2B - Packaged in 50 pound bags	\$0.265	\$0.2637	\$13.1838
<b>B.</b>	<b>Less than Truckload Quantity of 22,000 to 43,950 pounds:</b>			
	TYPE 2A - Packaged in 50 pound bags	\$0.50	\$0.4975	\$24.8750
	TYPE 2B - Packaged in 50 pound bags	\$0.275	\$0.2736a	\$13.6813
<b>C.</b>	<b>Less than Truckload Quantity of 10,000 to 21,950 pounds:</b>			
	TYPE 2A - Packaged in 50 pound bags	\$0.51	\$0.5075	\$25.3725
	TYPE 2B - Packaged in 50 pound bags	\$0.285	\$0.2836	\$14.1788
<b><u>Lot # 2 – Awarded to Potters Industries Inc.</u></b>				

**LOT #3**

Item No.	Description	Original Awarded Price Per Pound	Revised Price Per Pound	Revised Package Price
<b>3.</b>	<b>TYPE 3 GLASS SPHERES:(Glass Spheres with Silane-Type Adherence Coating) for use with water-based acrylic latex type pavement marking material per detailed specifications</b>			
<b>A.</b>	<b>Full Truckload Quantity of 44,000 pounds or more:</b>			
	Packaged in 50 pound bags	\$0.4168	\$0.4147	\$20.7358
<b>B.</b>	<b>Less than Truckload Quantity of 22,000 to 43,950 pounds:</b>			
	Packaged in 50 pound bags	\$0.4368	\$0.4346	\$21.7308
<b>C.</b>	<b>Less than Truckload Quantity of 10,000 to 21,950 pounds:</b>			
	Packaged in 50 pound bags	\$0.4368	\$0.4346	\$21.7308
<b><u>Lot # 3 – Awarded to Weissker Manufacturing, LLC</u></b>				

(continued)

**Product Classification B:**

**Glass Spheres for ReflectORIZED Pavement Markings for Airport Runway Use:**

**Lot #4**

Item No.	Description	Original Awarded Price Per Pound	Revised Price Per Pound	Revised Package Price
<b>4.</b>	<b><u>TYPE 1 GLASS SPHERES – Low Index Recycled Glass Spheres for drop-on applications per detailed specifications</u></b>			
<b>A.</b>	<b>Full Truckload Quantity of 44,000 pounds or more:</b>			
	Type 1 A - Packaged in 50 pound bags	\$0.2632	\$0.2619	\$13.0942
	Type 1 B - Packaged in 50 pound bags	\$0.2632	\$0.2619	\$523.768
<b>B.</b>	<b>Less than Truckload Quantity of 22,000 to 43,950 pounds:</b>			
	Type 1 A - Packaged in 50 pound bags	\$0.2832	\$0.2818	\$14.0892
	Type 1 B - Packaged in 50 pound bags	\$0.2832	\$0.2818	\$563.568
<b>C.</b>	<b>Less than Truckload Quantity of 10,000 to 21,950 pounds:</b>			
	Type 1 A - Packaged in 50 pound bags	\$0.2832	\$0.2818	\$14.0892
	Type 1 B - Packaged in 50 pound bags	\$0.2832	\$0.2818	\$563.568
<b><u>Lot # 4 – Awarded to Weissker Manufacturing, LLC</u></b>				

**Lot #5**

Item No.	Description	Original Awarded Price Per Pound	Revised Price Per Pound	Revised Package Price
<b>5.</b>	<b><u>TYPE III GLASS SPHERES - High Index, Virgin Chemical Glass Spheres for increased retroreflectivity needs - per detailed specifications</u></b>			
<b>A.</b>	<b>Full Truckload Quantity of 44,000 pounds or more:</b>			
	Packaged in 50 pound bags	\$2.19	\$2.1791	\$108.9525
<b>B.</b>	<b>Less than Truckload Quantity of 22,000 to 43,950 pounds:</b>			
	Packaged in 50 pound bags	\$2.29	\$2.2786	\$113.9275
<b>C.</b>	<b>Less than Truckload Quantity of 10,000 to 21,950 pounds:</b>			
	Packaged in 50 pound bags	\$2.29	\$2.2786	\$113.9275
<b><u>Lot # 5 – Awarded to Potters Industries Inc.</u></b>				

(continued)

**Product Classification B:**

**Glass Spheres for ReflectORIZED Pavement Markings for Airport Runway Use:** (Continued)

**Lot 6:**

Item No.	Description	Original Awarded Price Per Pound	Revised Price Per Pound	Revised Package Price
6.	<b>TYPE IV GLASS SPHERES – Large Size - Low-Index - direct melt glass spheres for drop-on application per detailed specifications</b>			
<b>A.</b>	<b>Full Truckload Quantity of 44,000 pounds or more:</b>			
	Type 4 A - Packaged in 50 pound bags	\$0.4590	\$0.4567	\$22.8353
	Type 4 B - Packaged in 50 pound bags	\$0.4168	\$0.4147	\$20.7358
<b>B.</b>	<b>Less than Truckload Quantity of 22,000 to 43,950 pounds:</b>			
	Type 4 A - Packaged in 50 pound bags	\$0.4790	\$0.4766	\$23.8303
	Type 4 B - Packaged in 50 pound bags	\$0.4368	\$0.4346	\$21.7308
<b>C.</b>	<b>Less than Truckload Quantity of 10,000 to 21,950 pounds:</b>			
	Type 4 A - Packaged in 50 pound bags	\$0.4790	\$0.4766	\$23.8303
	Type 4 B - Packaged in 50 pound bags	\$0.4368	\$0.4346	\$21.7308
<b>Lot # 6 – Awarded to Weissker Manufacturing, LLC</b>				

**MINIMUM ORDER:**

Minimum order is 10,000 POUNDS **net weight**. The weight may be assorted among sphere types within the confines of the spheres’ overall classification. Orders for Highway Grade and Airport Grade **may not be mixed** to achieve minimum weight. Orders must be made in net weight as determined to be a multiple of stated package weight. Items designated as available in bags are to be ordered in multiples of 50 pounds. Items designated as available in box containers are to be ordered in multiples of 2,000 pounds.

Both contractors have indicated that they will accept orders below the minimum with additional shipping charges added.

**DELIVERY:**

**General** - Product will be required as soon as possible following the issuance of a purchase order. (Note that the 30 day delivery provision of Appendix B, Section 45 - PRODUCT DELIVERY is modified by this part of “DELIVERY”).

**Purchase Order Instructions**- Delivery shall be made in accordance with instructions on purchase order from each agency. 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 agency and, if applicable, from the Office of General Services, New York State Procurement. (SEE ALSO: SEPARATE CLAUSE ON “PURCHASE ORDERS AND INVOICES”).

**Shipping Dates And Delivery Time-**

- Contractor shall provide written acknowledgement of orders within five (5) business days after receipt of order which will include an anticipated shipping date of each order
- If shipment will not be made within the stated delivery time, the contractor is required to notify the agency in writing at least two weeks prior to the latest date of the original delivery obligation. This notification must include the reasons for the delay and the latest date the product will be shipped. Should the reason for the delay not be acceptable to the using agency, appropriate contract default proceedings will be initiated. Failure to supply timely written notification of delay may be cause for default proceedings.

(continued)

DELIVERY: (Continued)

**Shipping Dates And Delivery Time - (Continued)**

- All correspondence on shipping dates and delivery times shall be directed to the ordering agency's contact person.

**Delivery Condition-** Contractor shall be responsible to make no shipment of the product that will be exposed to conditions detrimental to the product during transit. Product must be delivered strictly in accordance with specifications and shall be "Ready for Use."

**Delivery Certification-** Contractor shall secure a signed receipt from agency certifying delivery of product. In the event deficiencies are later noted and a properly signed receipt is not available, contractor will be responsible.

**Discrepancies** - The contractor shall resolve all order and invoice discrepancies (e.g., shortages, breakages, etc.) within five business days from notification.

**Product Returns, Problem Product** - Products returned because of quality problems, duplicated shipments, outdated product, etc., shall be picked up by the contractor at the contractor's expense, within five business days after notification with no restocking charge and shall be replaced with specified products or the agency shall be credited/refunded the full purchase price.

**Product Returns, Agency Error** - Standard stock products ordered in error by agencies must be returned for credit within 15 days of receipt at the agencies' expense. Product must be in resalable condition (original container, unused). There shall be no restocking fee if returned products are resalable.

CERTIFICATE OF ANALYSIS:

The contractor is required to submit with each delivery a 'Notarized' and 'Certified' Certificate of Analysis, which will indicate the refractive index, percent roundness and sieve gradation of the delivered materials.

PURCHASE ORDERS AND INVOICING:

**General** – Orders under this contract are to be submitted directly to the contractor. All orders and invoices/vouchers should include the contract number and a line by line listing of separate charges.

**Invoices** - Contract users are instructed not to process invoices without needed information. Invoices must be detailed and include **all** of the following:

- Contract Number
- Purchase Order Number
- Item Number
  - Should not be something that is "unique" to dealer or distributor.
  - Should be something that can be tracked by a third party.
  - Preferably a manufacturer's code or identifying number.
- Line item breakdown of all charges
- Line item breakdown of any deletion

Failure to comply may result in lengthy payment delays.

NYS agencies and/or political subdivisions whose receiving facilities cannot accommodate entrance of an over the road trailer with a height of 13'-6" must specify on their purchase order - "Maximum trailer height for delivery to this location is \_\_\_\_."(insert height in this space).

(continued)

**CONTRACT PAYMENTS:**

Payments cannot be processed by State facilities until the contract products have been delivered in satisfactory condition or services have been satisfactorily performed. Payment will be based on any invoice used in the supplier's normal course of business. However, such invoice must contain sufficient data including but not limited to contract number, description of product or service, quantity, unit and price per unit as well as federal identification number.

State facilities are required to forward properly completed vouchers to the Office of the State Comptroller for audit and payment. All facilities are urged to process every completed voucher expeditiously giving particular attention to those involving cash discounts for prompt payment.

Political subdivisions and others authorized by law are allowed to participate in these contracts. Those entities are required to make payments directly to the contractor. Prior to processing such payment, the contractor may be required to complete the ordering non-State agency's own voucher form.

See "Contract Billings" in Appendix B, OGS General Specifications.

**FIELD SAMPLING:**

The contractor shall be aware that throughout the duration of the contract, to ensure compliance with the detailed specifications at all times, each delivery made may be subject to field sampling prior to its use by the ordering agency. The sampling procedure for a typical truckload lot (40,000 lbs. in 20-2,000 lb. boxes) shall be as follows:

1. From the total of twenty (20) boxes, three (3) boxes shall be selected at random.
2. Using a thief or sampling tube (commonly known as a "grain sampler"), a "spot sample" will be taken from each corner of the three (3) boxes selected above. For square or rectangular shaped boxes, an additional "spot sample" shall be taken from each of the three (3) boxes at the center of one side.
3. All "spot samples" taken using the above procedure will be combined into one (1) "test sample" container and deemed to constitute a representative sample of the subject truckload delivery. The "test sample" should weigh approximately 5 lbs. This "test sample" will be forwarded to the ordering agency's designated laboratory for analysis.

Any deviations from the detailed specification found in the field sample shall be sufficient justification for rejection of entire shipment and a conforming replacement shipment shall be delivered within seven (7) calendar days of date of rejection notice, as per specifications.

**PRODUCT DISCONTINUATION AND SUBSTITUTION:**

In the event a specified manufacturer's Product listed in the Contract becomes unavailable or cannot be supplied by the Contractor for any reason (except as provided for in the Savings/Force Majeure Clause) a Product deemed in writing by the Office of General Services to be equal to or better than the specified Product must be substituted by the Contractor at no additional cost or expense to the Authorized User.

It is the Contractor's responsibility to inform the Office of General Services Purchasing Officer in a timely fashion. The notification should include the date of loss of availability and the current inventory level for the product. The contractor shall provide to OGS NYSPRO complete information on the replacement product including, but not limited to, a Specification List, Function and Feature list, and Comparison of Performance between the new and old product.

Unless otherwise specified, any substitution of Product prior to the Commissioner's written approval may be cause for cancellation of contract. In the event that a contractor is unable to provide a replacement, it is the State's right to cancel the contract and to proceed with an award to the next lowest responsive bidder.

**RECALLS:**

The contractor must immediately notify the Office of General Services, New York State Procurement of any recalls pertaining to product on contract.

(continued)

**GOVERNMENT MANDATED PROGRAM ADJUSTMENT**

An adjustment in product and/or price may be permitted if a government mandated program such as a new Federal Highway Administration Specification Standard or MUTCD regulations take effect and suitable documentation is furnished to the State. The State will determine if the requested change is verifiable and is reasonable. Replacement product would be subject to NYS Department of Transportation testing and approval by the Department of Transportation, The Office of General Services and the Office of the State Comptroller. A price adjustment may be permitted for only a limited time since such an adjustment would eventually be reflected in a Producer Price Index or Industrial Standard Indices.

**NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS:**

New York State political subdivisions and others authorized by New York State law may participate in 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 "Participation in Centralized Contracts" in Appendix B, OGS 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.ny.gov/purchase/snt/othersuse.asp>). Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to OGS New York State Procurement's Customer Services at 518-474-6717.

**EXTENSION OF USE:**

Contracts awarded herein 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 any resultant contract if such State normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

**CONTRACT MIGRATION:**

State Agencies or any other authorized user holding individual contracts with contractors under this centralized contract shall be able to migrate to this contract award with the same contractor, effective on the contract begin date (retroactively, if applicable). Migration by an agency or any other authorized user to the centralized contract shall not operate to diminish, alter or extinguish any right that the agency or other authorized user otherwise had under the terms and conditions of their original contract.

**CONTRACT PERIOD AND RENEWALS:**

A discrepancy was noted in the bid document, as the ending term date of December 31, 2014 listed on the bid cover contradicted the bid clause calling for a four year initial term, with a possible single year renewal. It is the intention of the State to abide by the originally written clause and enter into a contract for a term of four years as stated on the cover of this award.

If mutually agreed between the New York State Procurement and the contractor, the contract may be renewed under the same terms and conditions for an additional period, not to exceed a total contract term of five (5) years.

**SHORT 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 one month upon notice to the contractor with the same terms and conditions as the original contract including, but not limited to, quantities (prorated for such one month extension), prices, and delivery requirements. With the concurrence of the contractor, the extension may be for a period of up to three months in lieu of one month. However, this extension terminates should the replacement contract be issued in the interim.

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**CANCELLATION FOR CONVENIENCE:**

The State of New York retains the right to cancel this contract, in whole or in part without reason provided that the Contractor is given at least sixty (60) days notice of its intent to cancel. This provision should not be understood as waiving the State's right to terminate the contract for cause or stop work immediately for unsatisfactory work, but is supplementary to that provision. Any such cancellation shall have no effect on existing Agency agreements, which are subject to the same 60 day discretionary cancellation or cancellation for cause by the respective user Agencies.

**OGS OR LESS" GUIDELINES APPLY TO THIS CONTRACT:**

Purchases of the products included in the Invitation For Bids and related Contract Award Notification are subject to the "OGS or Less" provisions of Section 163.3.a.v., Article XI, of the New York State Finance Law. This means that State agencies can purchase products from sources other than the contractor provided that such products are substantially similar in form, function or utility to the products herein and are: **1.) Lower in price, - and/or- 2.) Available under terms which are more economically efficient to the State agency** (e.g. delivery terms, warranty terms, etc.). Agencies are reminded that they must provide the State contractor an opportunity to match the non-contract savings at least two business days prior to purchase. In addition, purchases made under "OGS or Less" flexibility must meet all requirements of law including, but not limited to, advertising in the New York State Contract Reporter, prior approval of the Comptroller's Office and competitive bidding of requirements exceeding the discretionary bid limit. State agencies should refer to Procurement Council Bulletin "OGS or Less Purchases" for complete procedural and reporting requirements.

**PREFERRED SOURCE PRODUCTS AND SERVICES:**

Some products/services in this contract may be available from one or more preferred source suppliers such as Correctional Industries (Corcraft), Industries for the Blind of NYS, and NYS Industries for the Disabled. Agencies are reminded to comply with the statutory requirements under Section 162 of the State Finance Law and the guidelines issued by the State Procurement Council to afford first priority to products and services available from preferred sources which meet your form, function and utility.

Contractors are required to include this notice in all price lists and contract updates.

**OVERLAPPING CONTRACT ITEMS:**

Products/services available in this contract may also be available from other New York State contracts. Agencies should select the most cost effective procurement alternative that meets their program requirements and maintain a procurement record documenting the basis for the selection.

**REPORT OF CONTRACT PURCHASES:**

Contractor shall furnish **Semi-Annual** reports containing total sales for both state agency and authorized non-state agency contract purchases, **every November and May throughout the term of the contract. Reports are to be received no later than the fifteenth of the month.**

<u>Order Date</u>	<u>Item #</u>	<u>Product Description</u>	<u>Sold To:</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Total Sales</u>
					\$	\$
<u>Grand Total Sales</u>						\$

**Reports are to be received no later than the fifteenth of the month** and are to be **submitted electronically in Microsoft Excel 2007** or lower format to the Office of General Services, New York State Procurement, Tower Bldg., Empire State Plaza, Albany, NY 12242, to the attention of the Purchasing Officer shown on the front page of the Contract Award Notification and shall reference the Group Number, the Award Number, Contract Number, sales period, and contractor's (or other authorized agent) name. The outlined sales report is the minimum information required. Additional related sales information may be required.

**CONTRACTOR'S SUPPORT:**

Onsite, field technical support shall be provided by the contractor within 48 hours of a request.

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**Additional Contractor Contact Information**

<b>CONTRACT #</b>	<b>CONTRACTOR &amp; ADDRESS</b>	<b>ADDITIONAL CONTACT INFORMATION</b>
<b>PC65088</b>	<p><b>Potters Industries Inc.</b></p> <p><i>Normal Business Hours: Monday – Friday 7:30 AM to 5:00 PM, Eastern Time</i></p>	<p><b>Contract Administrator</b>  Yvonne Harris, Contract Administrator  (610) 651-4714  (800) 552-3237 – Toll Free  (610) 408-9723 – Fax  yvonne.harris@pottersbeads.com – E-Mail  www.pottersbeads.com – Web Site</p> <p><b>Order Expeditor:</b>  Sally Filiatrault, Office Administrator  (315) 265-4920  (800) 2854920 – Toll Free  (315) 265-2474 - FAX  sally.filiatrault@pottersbeads.com – E-Mail</p> <p><b>Technical Service &amp; Emergency (After Hours) Assistance:</b>  David Fenn, Regional Sales Manager  (860) 567-3552  (800) 552-3237 – Toll Free  (203) 733-2294 - Cell  (860) 567-2231 - Fax  David.Fenn@pottersbeads.com – E-Mail</p>
<b>PC65089</b>	<p><b>Weissker Manufacturing, LLC.</b></p> <p><i>Normal Business Hours: Monday – Friday 8:00 AM to 5:00 PM, Eastern Time</i></p>	<p><b>Administrator, Expeditor, Technical Service &amp; Emergency Assistance:</b>  Mike Muta, Vice President/Plant Manager  (570) 267-0015  (866) 998-0050 – Toll Free  (570) 267-0019 – Fax  (570) 510-1833 – Cell  (315) 488-6464 - Emergency #  mike.muta@weissker.com – E-Mail</p>

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**State of New York  
 Office of General Services  
 NEW YORK STATE PROCUREMENT  
 Contract Performance Report**

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

**Contract No.:** \_\_\_\_\_ **Contractor:** \_\_\_\_\_

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

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

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

**CONTRACTOR**

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

Comments: \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_ (over)

Agency: \_\_\_\_\_ Prepared by: \_\_\_\_\_

Address: \_\_\_\_\_ Title: \_\_\_\_\_

\_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_ Phone: \_\_\_\_\_

\_\_\_\_\_ E-mail: \_\_\_\_\_

**Please detach or photocopy this form & return by FAX to 518/474-2437 or mail to:**

OGS NEW YORK STATE PROCUREMENT  
 Customer Services, 37th Floor  
 Corning 2<sup>nd</sup> Tower - Empire State Plaza  
 Albany, New York 12242  
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