

Group 40625– Award 22792, Heavy Equipment

HOW TO USE THE CONTRACTS

July 8, 2014

PIGGYBACK CONTRACTS

Group 40625, Award 22792 includes “piggyback” contracts made between OGS and the Contractors (see the “Award Document” page linked from <http://www.ogs.ny.gov/purchase/spg/awards/4062522792Can.htm>). The terms and conditions of the Piggyback Contracts (see the “Contractor Information” page linked from <http://www.ogs.ny.gov/purchase/spg/awards/4062522792Can.htm>) shall supersede any conflicting terms and conditions set forth in the Master Contracts. The Master Contracts are contracts established by the National Joint Powers Alliance (NJPA); <http://www.njpacoop.org>.

PROCUREMENT RECORD

When placing purchase orders under the contract(s), the Authorized User should be familiar with and follow the terms and conditions governing its use. The authorized user is accountable and responsible for compliance with the requirements of public procurement processes. 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 which should include:

- a. a statement of need and associated requirements,
- b. obtaining all necessary prior approvals,
- c. a summary of the contract alternatives considered for the purchase,
- d. the reason(s) supporting the resulting purchase (e.g., show that 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).

PRICE AND DISCOUNT

New York State Contract discounts are listed on the “Contractor and Pricing Information” pages linked from the “Contractor Information” page located at <http://www.ogs.ny.gov/purchase/spg/awards/4062522792Can.htm>). The Contractor’s price list may be obtained by following the link on the “Contractor and Pricing Information” page, or by contacting the Contractor’s Centralized Contract Contact.

1. MINIMUM ORDER. There are no minimum order quantities under the Master Contract or this Piggyback Contract.
2. PRICE AND DISCOUNTS. Price shall include all customs duties and charges and be net, F.O.B. destination any point in New York State as designated by the ordering Authorized User.

In the alternative, shipping costs from the shipping point may be added to invoice for the product, with a copy of the freight bill. Shipping costs are to be prepaid by Contractor and such orders are to be shipped on an F.O.B. destination basis. Contractor shall provide the Authorized User with an estimate of shipping charges prior to placement of an order. All such orders shall be shipped by the most economical method for the proper delivery of the product unless special instructions are stated on the Purchase Order by the Authorized User.

3. Any prompt payment terms (cash discounts) or quantity (volume) discounts which are included in the Master Contract will also be included in this Piggyback Contract.

4. "OGS OR LESS" GUIDELINES APPLY TO THIS CONTRACT

Purchases of the commodities included in the Piggyback Contract are subject to the "OGS or Less" provisions of State Finance Law §163(3)(a)(v). This means that State agencies can purchase commodities from sources other than the Contractor provided that such commodities are substantially similar in form, function or utility to the commodities herein and are:

- A. lower in price
-and/or-
- B. available under terms that are more economically efficient to the State agency (e.g. delivery terms, warranty terms, etc.).

5. State agencies are reminded that the Contractor must be provided 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.

PRODUCT DELIVERY

Delivery must be made as ordered to the address specified on the Purchase Order and in accordance with the terms of the Contract or Contract Award Notice. Unless otherwise agreed by the Authorized User and Contractor, delivery shall be made within ninety calendar days after receipt of a Purchase Order by the Contractor. The decision of the Commissioner as to compliance with delivery terms shall be final. The burden of proof for delay in receipt of Purchase Order shall rest with the Contractor. In all instances of a potential or actual delay in delivery, the Contractor shall immediately notify the Commissioner and the Authorized User, and confirm in writing the explanation of the delay, and take appropriate action to avoid any subsequent late deliveries. Any extension of time for delivery must be requested in writing by the Contractor and approved in writing by the Authorized User. Failure to meet such delivery time schedule may be grounds for cancellation of the order or, in the Commissioner's discretion, the Contract.

OVERLAPPING CONTRACT ITEMS

Products/services available under this Piggyback Contract may also be available from other New York State contracts, including those listed below. Authorized Users are advised to select the most cost effective procurement alternative that meets their program requirements, and to document the basis for this selection in the procurement record.

1. Group 37000, Award 21459, Mowing Equipment, Commercial and Golf Riding Type
(<http://www.ogs.ny.gov/purchase/spg/awards/3700021459Can.htm>)
2. Group 39101, Award 21342, Pallet/Forklift Trucks (Electric and LPG)
(<http://www.ogs.ny.gov/purchase/spg/awards/3910121342Can.htm>)
3. Group 40603, Award 22063, Wheel Loaders
(<http://www.ogs.ny.gov/purchase/spg/awards/4060322063Can.htm>)
4. Group 45001, Award 22186, Turf Utility Vehicles
(<http://www.ogs.ny.gov/purchase/spg/awards/4500122186Can.htm>)

PURCHASE ORDERS

Purchase Orders shall be effective and binding upon Contractor when placed in the mail or electronically transmitted during this Piggyback Contract period addressed to the Contractor at the address for receipt of orders designated in the Master Contract or Contract Award Notification. Any discrepancies between the terms stated on the Contractor's order form, confirmation or acknowledgment, and the Piggyback Contract terms shall be resolved in favor of the terms most favorable to the Authorized User. If an Authorized User of the Piggyback Contract adds written terms and conditions to the Purchase Order that conflict with the terms and conditions of the Piggyback Contract, the Contractor may reject the Purchase Order within five (5) business days of its receipt or fulfill the Purchase Order. Prior to rejection of any additional terms and conditions to the Purchase Order, the Contractor has an obligation to attempt to negotiate the additional written terms and conditions in good faith with the Authorized User. For more details on these provisions, See Appendix B, Section 44, *Purchase Orders*.

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*.

Upon request, all eligible non-state agencies must furnish contractors with the proper tax exemption certificates and documentation certifying eligibility to use state contracts. Questions regarding an organization's eligibility to purchase from New York State contracts may also be directed to OGS NYSPRO Customer Services at 518-474-6717.

POOR PERFORMANCE

Authorized Users should notify NYSPRO Customer Services promptly if the Contractor fails to meet the requirements of this contract. Performance which does not comply with requirements or is otherwise unsatisfactory to the Authorized User should also be reported to Customer Services:

Office of General Services
New York State Procurement
Customer Services Coordination
38th Floor Corning Tower
Empire State Plaza
Albany, NY 12242

Tel: 518-474-6717
Fax: 518-474-2437
E-mail: customer.services@ogs.ny.gov

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