



**Office of General Services  
Procurement Services**

Corning Tower, Empire State Plaza, Albany, NY 12242 | <https://ogs.ny.gov/procurement> | [customer.services@ogs.ny.gov](mailto:customer.services@ogs.ny.gov) | 518-474-6717

# Invitation for Bids **(Revised January 27, 2022)**

<b>BID OPENING</b> <b>DATE:</b> Thursday, February 10 <sup>th</sup> , 2022 <b>TIME:</b> 11:00 A.M. EST  <b>INVITATION FOR BIDS NUMBER:</b> <b>23252</b>	<b>TITLE:</b> <b>Group 38604 – Traffic Paint (Waterborne – Lead-Free) &amp; Glass Spheres for Reflectorized Pavement Marking (Various Types) (Statewide)</b>  <b>Classification Codes:31 &amp; 73</b>
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**CONTRACT PERIOD:** The later of (i) May 18, 2022, or (ii) the date of OSC approval through May 17, 2027

**DESIGNATED CONTACTS:** In accordance with the Procurement Lobbying Law [State Finance Law § 139-j(2)(a)], the following individuals are the Designated Contacts for this Solicitation. All questions relating to this Solicitation must be addressed to the Designated Contacts.

Email Address: [Brandy.Alden@ogs.ny.gov](mailto:Brandy.Alden@ogs.ny.gov)

Brandy Alden Contract Management Specialist 2 Telephone No. (518) 408-1140 E-mail address: <a href="mailto:Brandy.Alden@ogs.ny.gov">Brandy.Alden@ogs.ny.gov</a>	Jose DeAndres Team Leader Telephone No. (518) 474-3024 E-mail address: <a href="mailto:Jose.DeAndres@ogs.ny.gov">Jose.DeAndres@ogs.ny.gov</a>
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<b>Bidder's Federal Tax Identification Number:</b> <i>(Do Not Use Social Security Number)</i>  _____	<b>NYS Vendor Identification Number:</b> <i>(See New York State Vendor File Registration Clause)</i>  _____
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Legal Business Name of Company Bidding: \_\_\_\_\_

D/B/A – Doing Business As (if applicable): \_\_\_\_\_

Street	City	State	County	Zip Code
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E-mail Address: _____	Company Web Site: _____
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If applicable, place an "x" in the appropriate box(es) *(check all that apply)*

<input type="checkbox"/> NYS Small Business # Employees	<input type="checkbox"/> Service Disabled Veteran Owned Business	<input type="checkbox"/> NYS Minority Owned Business	<input type="checkbox"/> NYS Women Owned Business
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If you are not bidding, place an "x" in the box and return this page only.

**WE ARE NOT BIDDING AT THIS TIME BECAUSE:**

**FOR PROCUREMENT SERVICES USE ONLY**

LITERATURE <input type="checkbox"/>	LETTER <input type="checkbox"/>	USB FLASH DRIVE <input type="checkbox"/>	# of Binders/Packages: _____
PURC. MEMO <input type="checkbox"/>	OTHER <input type="checkbox"/>	_____	Documented by: _____

PR# 23252

### **Bidder Certification and Affirmation**

Bidder certifies and affirms as follows:

1. This Bid is an irrevocable offer for 90 days from the date of submission to the New York State (“NYS”) Office of General Services (“OGS”), or for such longer period as is set forth in the Invitation for Bids.
2. The Bidder can and will provide and make available, at a minimum, the Products, deliverables and/or services as described in the Invitation for Bids.
3. The Bidder has read and understands the provisions of the Invitation for Bids, and all appendices, attachments, and exhibits attached thereto, including Appendix A (Standard Clauses for New York State Contracts) and Appendix B (General Specifications).
4. The information contained in this Bid is complete, true, and accurate.
5. The Bidder understands and agrees to comply with the requirements of the Procurement Lobbying Law, State Finance Law § 139-j and § 139-k, and with OGS’s procedures relating to permissible contacts during a procurement as required by State Finance Law § 139-j(3) and § 139-j(6)(b). Such requirements and procedures are posted at <https://ogs.ny.gov/acpl>.

The signer affirms under penalties of perjury that he or she is duly authorized to legally bind the Bidder referenced above and that he or she signed this Bidder Certification as the legally binding act of the Bidder.

\_\_\_\_\_  
Print Full Bidder Entity Name

By: \_\_\_\_\_  
Signature of Person Authorized to Legally Bind the Bidder

\_\_\_\_\_  
Print Name of Signatory

\_\_\_\_\_  
Print Title of Signatory

\_\_\_\_\_  
Date

**RETURN THIS PAGE AS PART OF BID**

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## SECTION 1: INTRODUCTION

### 1.1 Overview

This Solicitation is issued by the New York State (“NYS”) Office of General Services (“OGS”), Procurement Services for Traffic Paint (Waterborne—Lead-Free) & Glass Spheres for Reflectorized Pavement Marking (Various Types) as specified herein for all Authorized Users eligible to purchase through this Solicitation.

- Bidders may bid on as few or as many LOTS as they choose. Bidders are required to bid on all items within a LOT.
- Bidders may bid any products that fall within the defined Scope and Specifications of this Invitation for Bids.
- Bid products for LOT I and LOT II are not limited to those that appear on the NYS Department of Transportation (NYSDOT) approved list, all products bid will be subject to NYSDOT approval.

This Solicitation outlines the terms and conditions and all applicable information required for submitting a Bid. Bidders should pay strict attention to the Bid submission date and time to prevent disqualification. Bidders are strongly encouraged to read the language of this Solicitation thoroughly and to precisely follow the instructions included in the Solicitation and all attachments.

### 1.2 Scope

Traffic markings (stripes) are regarded as one of the most cost-effective methods of controlling traffic flow and these products increase driver awareness and help ensure the safety of the driving public.

The solicitation contains:

- Ready-mixed, fast drying, white and organic yellow waterborne traffic paint for use on bituminous and Portland cement concrete pavements. Waterborne traffic paint supplied under this specification shall be designed for heated application by mobile long line striping equipment.
- Type I reflectorizing glass spheres with moisture resistant coating for application on waterborne traffic paint to produce a reflective painted roadway stripe to provide visual traffic delineation, both day and night, for the motoring public.
- Drying agent compound to be used as an additive in conjunction with waterborne traffic paint and glass spheres to provide a drying agent which accelerates the no-tack time of the waterborne traffic paint to reduce wet paint tracking into driving lanes.

Products as specified herein are for all Authorized Users eligible to purchase through this Solicitation.

**1.3 Estimated Quantities**

A Contract resulting from this Solicitation shall be an estimated quantity Contract. No specific quantities are represented or guaranteed and the State provides no guarantee of individual Authorized User participation. The Contractor must furnish all quantities actually ordered at or below the Contract prices. The anticipated dollar value of the award for this Solicitation, based on historical purchases under previous awards, is approximately \$5 million annually. The individual value of each resultant Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered. Authorized Users will be encouraged to purchase from Contractors who offer the Products and pricing that best meet their needs in the most practical and economical manner. See Appendix B, Estimated/Specific Quantity Contracts and Participation in Centralized Contracts.

Numerous factors could cause the actual quantities of Products purchased under a Contract resulting from this Solicitation to vary substantially from the estimates in the Solicitation. Such factors include, but are not limited to, the following:

- Such Contracts may be non-exclusive Contracts.
- There is no guarantee of quantities to be purchased, nor is there any guarantee that demand will continue in any manner consistent with previous purchases.
- The individual value of each Contract is indeterminate and will depend upon actual Authorized User demand and actual quantities ordered during the contract period.
- The State reserves the right to terminate any Contract for cause or convenience prior to the end of the term pursuant to the terms and conditions of the Contract.
- Contract pricing that is lower than anticipated could result in a higher quantity of purchases by Authorized Users than anticipated.
- Contract pricing that is higher than anticipated could result in a lower quantity of purchases by Authorized Users than anticipated.

By submitting a Bid, Bidder acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the resulting Contracts could vary substantially from the estimates provided in this Solicitation.

**1.4 Key Events/Dates**

<b>EVENT</b>	<b>DATE</b>	<b>TIME</b>
IFB Release	January 7, 2022 (tentative)	N/A
Closing Date for First Round of Bidder Questions	January 20, 2022	5:00 PM ET
OGS Procurement Services' Responses to First Round of Bidder Questions	January 27, 2022 (tentative)	N/A
Bid Opening / Due date for Bids	February 10, 2022	11:00 AM ET
Contract Approval Date / Award Publish Date	Upon OSC Approval	N/A

## 1.5 NYS Contract Reporter

Bidders must register with the New York State Contract Reporter (“NYSCR”) at <https://www.nyscr.ny.gov> in order to receive notifications about this Solicitation. Navigate to the “I want to find contracts to bid on” page to register for your free account. In order to receive e-mail notifications regarding updates to the content or status of a particular ad, you must “bookmark the ad” on the upper right-hand side of the ad, then return to your Account, view your list of bookmarked ads, and then select “send me notification updates” option listed to the right of the ad. Answers to all questions of a substantive nature will be posted in the form of a question-and-answer document and released through the NYSCR. Any updates to Solicitation documents will also be posted and released through the NYSCR.

**If you do not opt-in to receive notification updates regarding a particular ad, you will not receive e-mail notifications regarding updates, including e-mail notifications regarding the posting of the question and answer document and updates to Solicitation documents.**

Be advised that submission of responses to the Solicitation that do not reflect and take into account updated information may result in your Bid being deemed non-responsive to the Solicitation.

## 1.6 Bidder Questions

All questions regarding this Solicitation should be submitted using Attachment 7 – *Bidder Questions Form*, citing the applicable Solicitation document name and document section. The completed form must be emailed to [Brandy.Alden@ogs.ny.gov](mailto:Brandy.Alden@ogs.ny.gov) by the date and time indicated in the *Key Events/Dates* section. Questions submitted after the deadline indicated may not be answered. Bidders are strongly encouraged to submit questions as soon as possible. Answers to all questions of a substantive nature will be provided to all prospective Bidders in the form of a question-and-answer document which will be posted to the OGS website and will not identify the Bidder asking the question. Notification of this posting will be advertised in the NYSCR. Bidders must select the “opt-in” option within the Contract Reporter ad to receive notification updates of this Solicitation.

If Bidder intends to submit a Bid that deviates from the requirements of the Solicitation in any way, the proposed deviations should be submitted during the *Questions* period so that they may be given due consideration prior to the submission of Bids. See *Bid Deviations* for additional information.

## 1.7 NYS Comptroller Approval

Pursuant to the Memorandum of Understanding (“MOU”) dated August 15, 2019 between the Offices of the New York State Governor Andrew M. Cuomo (“Executive”), New York State Comptroller Thomas P. DiNapoli (“OSC”), the State University of New York (“SUNY”), the State University of New York Construction Fund (“SUCF”), the City University of New York (“CUNY”), and the City University of New York Construction Fund (“CUCF”), procurement documents and contracts awarded under this Solicitation shall have no force and effect and the State bears no liability unless such procurement documents and contracts awarded under this Solicitation are approved by OSC or the pertinent pre-audit review period under the MOU has elapsed.



## 1.8 MWBE & SDVOB Interest in Partnering with Bidders

If a New York State certified MWBE or SDVOB would like to indicate its interest in working with participating Bidders, please send an e-mail entitled “*Solicitation 23252 MWBE or SDVOB INTEREST\_COMPANY NAME*” to [Brandy.Alden@ogs.ny.gov](mailto:Brandy.Alden@ogs.ny.gov) on or before the bid opening date.

The e-mail content should include:

1. Company Name
2. Contact Name and Contact Information such as Phone Number, Mailing Address and E-Mail Address
3. Brief description of the company and the products and/or services that the company offers that are related to this Solicitation (for example “Company ABC manufactures pencils”)
4. The NYS Certification Type (Minority and/or Women-Owned or SDVOB).
5. Include what locations in NYS the company provides services in.

A list of the NYS certified MWBE and SDVOB vendors who have expressed interest in this Solicitation through the timely submission of such email, will be made available to prospective Bidders through the publishing of a Purchasing Memorandum posted through the NYSCR.

## 1.9 Summary Of Policy And Prohibitions On Procurement Lobbying

Pursuant to State Finance Law § 139-j and § 139-k, this Solicitation includes and imposes certain restrictions on communications between OGS and a Bidder during the procurement process. A Bidder is restricted from making contacts from the earliest posting, on a governmental entity’s website, in a newspaper of general circulation, or in the procurement opportunities newsletter of intent to solicit offers/Bids through final award and approval of the Procurement Contract by OGS and, if applicable, the Office of the State Comptroller (“restricted period”) to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law § 139-j(3)(a). Designated staff, as of the date hereof, are identified on the first page of this Solicitation. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Bidder pursuant to State Finance Law §139-j and §139-k. Certain findings of non-responsibility can result in rejection for Contract award and, in the event of two findings within a four-year period, the Bidder is debarred from obtaining governmental Procurement Contracts for four years. Further information about these requirements can be found on the OGS website at: <https://ogs.ny.gov/acpl/>

## 1.10 Definitions

Capitalized terms used in this Solicitation shall be defined in accordance with Appendix B, Definitions, or as below.

**“Bid Deviation”** shall refer to any variance submitted or proposed by a Bidder, which deviates from, adds extraneous terms to, conflicts with or offers an alternative to any term, condition, specification or requirement of the Solicitation.

**“Business Day”** shall refer to Monday through Friday from 8:00 AM – 5:00 PM ET, excluding NYS Holidays and federal holidays.

**“MWBE”** shall refer to a business certified with NYS Empire State Development (“ESD”) as a Minority- and/or Women-owned Business Enterprise.

**“NYS Holidays”** refers to the legal holidays for State employees in the classified service of the executive branch, as more particularly specified on the website of the NYS Department of Civil Service. This includes the following: New Year’s Day; Martin Luther King Jr. Day; Washington’s Birthday (observed); Memorial Day; Juneteenth; Independence Day; Labor Day; Columbus Day; Veterans Day; Thanksgiving Day; and Christmas Day.

**“NYS Vendor ID”** shall mean the ten-character identifier issued by New York State when a vendor is registered on the Vendor File.

**“Preferred Source Products”** shall refer to those Products that have been approved in accordance with New York State Finance Law § 162.

**“Preferred Source Program”** shall refer to the special social and economic goals set by New York State in State Finance Law § 162 that require a governmental entity purchase select Products from designated organizations when the Products meet the “form, function and utility” requirements of the governmental entity. Under State Finance Law § 163, purchases of Products from Preferred Sources are given the highest priority and are exempt from the competitive bidding requirements. The New York State Preferred Sources include:

The Correctional Industries Program of the Department of Corrections and Community Supervision (“Corcraft”); New York State Preferred Source Program for People Who Are Blind (“NYSPSP”); and the New York State Industries for the Disabled (“NYSID”). These requirements apply to state agencies, political subdivisions and public benefit corporations (including most public authorities).

**“Procurement Services”** shall refer to a business unit of OGS, formerly known as New York State Procurement (“NYSPRO”) and Procurement Services Group (“PSG”).

**“Resellers”** shall refer to any model for distribution of Product other than direct from the Contractor. Resellers include but are not limited to approved value-added resellers (“VARs”), distributors, dealers, sales agents, and alternate channel partners.

**“SDVOB”** shall refer to a NYS-certified Service-Disabled Veteran-Owned Business

### **1.11 Appendices and Attachments**

The following appendices and attachments, attached hereto, are hereby expressly made a part of this Solicitation as fully as if set forth at length herein.

Appendix A – Standard Clauses for NYS Contracts (October 2019)

Appendix B – General Specifications (April 2016)

Appendix C – FEMA Terms and Conditions

Attachment 1 – Pricing

Attachment 2 – NYS Required Certifications

Attachment 3 – Encouraging Use of NYS Businesses

Attachment 4 – Insurance Requirements

Attachment 5 – Bidder Information Questionnaire

Attachment 6 – Bidder Submission Checklist

Attachment 7 – Bidder Questions Form

Attachment 8 – Report of Contract Usage

Attachment 9 – Specifications

Attachment 10 – Manufacturer’s Affidavit of Recycled Content

Attachment 11 – Supplier/Manufacturer’s Certificate

Attachment 12 – Contractor/Reseller Information

### **1.12 Conflict of Terms**

Conflicts among the documents shall be resolved in the following order of precedence:

1. Appendix A, Standard Clauses for New York State Contracts;
2. The Solicitation;
3. Appendix B, General Specifications;
4. All other appendices and attachments to the Solicitation;

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## SECTION 2: BIDDER QUALIFICATIONS

Bidder is advised that the State's intent in having the requirements listed below is to ensure that only qualified and reliable Contractors perform the work of the resulting Contract. Bidder must be capable of processing and shipping large numbers of orders to various destinations. Bidder shall have the burden of demonstrating to the satisfaction of Procurement Services that it can perform the work required. Procurement Services retains the right to request any additional information pertaining to the Bidder's ability, qualifications, financial capacity, financial stability, and procedures used to accomplish all work under the resulting Contract as it deems necessary to ensure safe and satisfactory work.

Bidders may bid on as few or as many LOTS as they choose. Bidders are required to bid on all Items within a LOT and must meet all Bidder Requirements for each LOT bid as stated below:

### 2.1 Traffic Paint (Waterborne – Lead-Free)

- **LOT I: White & LOT II: Organic Yellow**

Bids for this product will be accepted only from the established manufacturers or their authorized dealer/distributors listed on the NYS Department of Transportation (NYSDOT) Technical Services Materials Bureau's – *Approved List for Pavement Marking Materials for Traffic Paint 727-09* (<https://www.dot.ny.gov/divisions/engineering/technical-services/technical-services-repository/alme/pages/650-1.html>) as published at the time of the bid opening for this Invitation for Bids. **Bid products are not limited to those that appear on the NYSDOT approved list.**

### 2.2 Glass Spheres for Reflectorized Pavement Marking

- **LOT III: Type I Glass Spheres (with Moisture Resistant Coating)**

Bids for this product will be accepted only from the established manufacturers or their authorized dealer/distributors listed on the NYS Department of Transportation (NYSDOT) Technical Services Materials Bureau's – *Approved List for Glass Beads for Pavement Markings 727-05* (<https://www.dot.ny.gov/divisions/engineering/technical-services/technical-services-repository/alme/pages/640-1.html>) as published at the time of the bid opening for this Invitation for Bids.

- **LOT IV: Glass Spheres for Reflectorized Pavement Marking: Glass Spheres with Drying Agent**

Bids will be accepted only from established manufacturers, or their authorized dealer/distributors, actively engaged in the production of highway marking materials and supplies.

NOTE: The Office of General Services and/or the NYSDOT reserves the right to inspect any or all of a bidder's glass sphere manufacturing facilities and processes prior to or following the contract award. The inspection may include a review of the manufacturer's quality control procedures and sampling/laboratory testing of the glass spheres that the manufacturer proposes to furnish for this contract.

Bidder must maintain a business establishment with adequate inventories of the products offered, and must be capable of processing and shipping large numbers of orders to various destinations. Bidder must maintain service facilities and have trained personnel qualified to service the product furnished according to the Authorized User's need within 48 hours.

Any Bidder that does not currently hold a contract under OGS Award 23056 or Award 23172 must provide a minimum of five references including references from two of the bidder's largest customers.

References shall be commercial or governmental accounts, and should demonstrate the ability of the vendor to perform jobs similar in scope to the size, nature and complexity of the outlined bid.

The references shall include:

- Name, address, contact person, telephone number, email address, and number of years bidder has serviced the referenced account;
- Volume of business performed within the past three years for each referenced account

## **SECTION 3: SPECIFICATIONS**

It is the Contractor's responsibility to provide product that conforms with the specifications as listed in this Invitation for Bids for the entire term of the awarded contract. No changes or substitution of products or pricing is permitted without the express approval of OGS Procurement Services.

References made in this Solicitation are to NYSDOT Materials Bureau Approved Lists most current version as published at the time of this Invitation for Bids.

See Attachment 9 – Specifications, of this Solicitation for detailed information.

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## SECTION 4: BID SUBMISSION

### 4.1 Performance and Bid Bonds

There are no bonds for this Contract. The Commissioner of OGS has determined that no performance, payment or Bid bond, or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Contract is required at any time during the term of the resulting Contract.

### 4.2 NYS Vendor File Registration

Prior to being awarded a Contract pursuant to this Solicitation, the Bidder and any authorized resellers who accept payment directly from the State, must be registered in the New York State Vendor File (“Vendor File”) administered by the Office of the State Comptroller (“OSC”). This is a central registry for all vendors who do business with New York State Agencies and the registration must be initiated by a State Agency. Following the initial registration, a unique NYS Vendor ID will be assigned to your company and to each of your authorized resellers (if any) for use on all future transactions with New York State. Additionally, the Vendor File enables a vendor to use the Vendor Self-Service application to manage all vendor information in one central location for all transactions related to the State of New York.

If Bidder is already registered in the New York State Vendor File, the Bidder must enter its NYS Vendor ID on the first page of this Solicitation. Authorized resellers already registered should list the NYS Vendor ID number along with the authorized reseller information. (The NYS Vendor ID number is not the same as a SOCIAL SECURITY NUMBER or a TIN/FEIN number.)

If the Bidder is not currently registered in the Vendor File, the Bidder must request assignment of an NYS Vendor ID from OGS. Bidder must complete the OSC Substitute W-9 Form ([http://www.osc.state.ny.us/vendors/forms/ac3237s\\_fe.pdf](http://www.osc.state.ny.us/vendors/forms/ac3237s_fe.pdf)) and submit the form to OGS in advance of Bid submission. Please send this document to the Designated Contact identified in the Solicitation. In addition, if an authorized reseller is to be used that does not have an NYS Vendor ID, an OSC Substitute W-9 form should be completed by each authorized reseller and submitted to OGS. OGS will initiate the vendor registration process for all Bidders and authorized resellers. Once the process is initiated, registrants will receive an e-mail identifying their NYS Vendor ID and instructions on how to enroll in the online Vendor Self-Service application.

For more information on the Vendor File please visit the following website:

<https://www.osc.state.ny.us/state-vendors>

### 4.3 Format of Bid Submission

The complete Bid package must be received by OGS Procurement Services by the date and time of the Bid opening. Late Bids shall be handled in accordance with Appendix B, *Late Bids*. With respect to any Bid documents in Excel format, only those cells provided for entering Bid pricing and information are to be accessed by the Bidder.

Situations susceptible to Disqualification may include:

- E-mail or facsimile Bid submissions are not acceptable, and
- Absent Price Pages (Attachment 1 - *Pricing*) are not acceptable.
- Any Bid pricing or portions thereof submitted on USB flash drive that are incomplete or that cannot be opened/accessed may be rejected

It is recommended that the Bidder open, review and save/download all electronic files to the Bidder’s hard drive and/or to a secure back-up location. Only completed files (in the specified format) should be saved to a USB flash drive for submittal.

Bidders are responsible for the accuracy of their Bids. All Bidders are directed to take extreme care in developing their Bids. Bidders are cautioned to carefully review their Bids prior to Bid submission. A Bid that fails to conform to the requirements of the Solicitation may be considered non-responsive and may be rejected.

**4.4 Content**

A complete Bid consists of the following: Two (2) USB flash drives and One (1) loose-leaf binder containing the documents as indicated in the table below:

	<b><u>Bid Document</u></b>	<b><u>Electronic (USB)</u></b>	<b><u>Original (Hard Copy)</u></b>
<b>a.</b>	Pages 1 and 2 of the Solicitation with original ink signature, and any Bid Solicitation Updates with original ink signature	<b>X</b> (PDF)	<b>X</b>
<b>b.</b>	Bid Solicitation Updates (if applicable), with original ink signature	<b>X</b> (PDF)	<b>X</b>
<b>c.</b>	Completed Attachment 1 – Pricing <i>NOTE: If a Bidder is submitting multiple Bids for different products under LOT I or LOT II, a separate Attachment 1 - Pricing labeled as “YOUR COMPANY NAME – PRODUCT #” will be required for each product bid</i>	<b>X</b> (Excel)	<b>X</b>
<b>d.</b>	Completed Attachment 2 – NYS Required Certifications with original ink signatures	<b>X</b> (PDF)	<b>X</b>
<b>e.</b>	Completed Attachment 3 – Encouraging Use of NYS Businesses	<b>X</b> (PDF)	
<b>f.</b>	Proof of Compliance with Attachment 4 – Insurance Requirements	<b>X</b> (PDF)	
<b>g.</b>	Completed Attachment 5 – Bidder Information Questionnaire	<b>X</b> (Excel)	
<b>h.</b>	Completed Attachment 6 – Bidder Submission Checklist	<b>X</b> (Excel)	
<b>i.</b>	Attachment 7 – Bidder Questions Form	Not required to be submitted with the bid	
<b>j.</b>	Attachment 8 – Report of Contract Usage	Not required to be submitted with the bid	
<b>k.</b>	Attachment 9 – Specifications	Not required to be submitted with the bid	

(table continued on next page)



	<b><u>Bid Document</u></b>	<b><u>Electronic (USB)</u></b>	<b><u>Original (Hard Copy)</u></b>
<b>l.</b>	Completed Attachment 10 – Manufacturer’s Affidavit of Recycled Content with original ink signature	X (PDF)	X
<b>m.</b>	Completed Attachment 11 – Supplier/Manufacturer Certificate (if applicable), with original ink signature	X (PDF)	X
<b>n.</b>	Completed Attachment 12 – Contractor/Reseller Information (if applicable)	X (PDF)	
<b>o.</b>	Bidder must provide copies of at least one governmental and/or municipal contract (GSA, NASPO, other State, etc.) that shows net pricing and FOB point.  If such contracts are not available, the Bidder shall supply invoices of sales to large entities or corporations with repeat business detailing the discount and FOB point. New York State reserves the right to reject any Bidder that does not demonstrate reasonable pricing for this Solicitation.  <i>NOTE: This is not required if Bidder is currently awarded a contract under OGS Award 23056 or Award 23172</i>	X (PDF)	
<b>p.</b>	Bidder must provide a minimum of five references including references from two of the bidder's largest customers.  <i>NOTE: This is not required if Bidder is currently awarded a contract under OGS Award 23056 or Award 23172</i>	X (PDF)	
<b>q.</b>	Completed ST-220CA – Contractor Certification, notarized with original ink signatures	X (PDF)	X
<b>r.</b>	Completed EEO 100 – Equal Employment Opportunity Staffing Plan with original ink signature	X (PDF)	X
<b>s.</b>	Completed Standard Vendor Responsibility Questionnaire with original ink signature or Certification that a Questionnaire has been completed online	X (PDF)	X

Also, please note that in the case of discrepancies between paper copies and USB flash drive submissions of the documents required in both formats, the electronic USB flash drive copy shall take precedence over the paper copy.

A Bidder should note that any indicators or messages that have been built into the attachments are informational only and provided solely for the purpose of assisting Bidders in completing the attachments. The presence or absence of notes or indicators is not a determination by the State as to the sufficiency of the attachments with respect to the Solicitation requirements. Bidders remain responsible for reviewing the attachments to ensure compliance with the Solicitation requirements.

#### 4.5 Bid Envelopes and Packages

All Bids should have a label on the outside of the envelope or package itemizing the following information:

1. BID ENCLOSED (preferably bold, large print, all capital letters)
2. Solicitation number (IFB #23252)
3. Bid Opening Date and Time
4. The number of boxes or packages (e.g., 1 of 2; 2 of 2)

Failure to complete all information on the Bid envelope and/or package may necessitate the opening of the Bid prior to the scheduled Bid opening.

#### 4.6 Bid Delivery

Bids shall be delivered to the following address on or before 11:00 a.m. ET, on or before the Bid opening date as stated in Section - *Key Events/Dates*:

**State of New York Executive Department  
Office of General Services  
Procurement Services  
Corning Tower - 38th Floor Reception Desk  
Empire State Plaza  
Albany, NY 12242**

Bidder assumes all risks for timely, properly submitted deliveries. The time of Bid receipt is determined by OGS according to the clock at the above-noted location. A Bidder is strongly encouraged to arrange for delivery of Bids to OGS prior to the date of the Bid opening. Late Bids shall be rejected, except as provided in Appendix B, *Late Bids*. All Bids and accompanying documentation shall become the property of the State of New York and shall not be returned.

#### 4.7 Important Building Access Procedures

To access the Corning Tower, all visitors must check in by presenting photo identification at the information desk. Delays may occur due to a high volume of visitors. Visitors conducting Procurement Services business are encouraged to pre-register for building access by contacting the Procurement Services receptionist at (518) 474-6262 at least 24 hours prior to the visit. Visitors who are not pre-registered will be directed to a designated phone to call the Procurement Services receptionist. The receptionist will register the visitor at that time but delays may occur. Building access procedures may change or be modified at any time.

#### 4.8 NYS Required Certifications

A Bidder is required to submit the signed New York State Required Certifications (Attachment 2 – *NYS Required Certifications*) with its Bid.

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#### 4.9 Product Literature to Be Furnished with Bid

Bidder shall submit with its Bid detailed specifications, Product literature, and all necessary data on the Product to be furnished (“Product literature”). If the Product offered differs from the Product literature, such differences must be explained in detail. Failure to submit any of the Product literature may result in rejection of the Bid. The State, however, reserves the right to request any additional information deemed necessary for the proper evaluation of Bids.

#### 4.10 Supplier/Manufacturer’s Certificate

Bids will be accepted only from established manufacturers or their authorized dealer/distributors. Through completion and submission of the Supplier/Manufacturer’s Certificate, the supplier or manufacturer guarantees that the Bidder is an authorized dealer and has agreed to supply the Bidder with all quantities of Products required by the Bidder in fulfillment of its obligations under any resultant Contract with the State. Bidders shall use the certificate attached to this Solicitation to document this level of support (see Attachment 11 – *Supplier/Manufacturer’s Certificate*).

The Supplier/Manufacturer’s Certificate is to be forwarded by the Bidder to its proposed supplier or manufacturer for completion, and returned to the Bidder for inclusion with its Bid. The Commissioner reserves the right to investigate or make any inquiry into the capabilities of any Bidder to properly perform under any resultant Contract. See Appendix B, Participation in Centralized Contracts and Employees, Subcontractors, and Agents.

#### 4.11 Bid Deviations

Bids must conform to the terms set forth in the Solicitation. As set forth in Section 1.6, Bidder Questions, if Bidder intends to submit a Bid that deviates from the requirements of the Solicitation in any way, the proposed deviations should be submitted during the Questions period so that they may be given due consideration prior to the submission of Bids. Material deviations (including additional, inconsistent, conflicting, or alternative terms) submitted with the Bid may render the Bid non-responsive and may result in rejection of the Bid.

Bidder is advised that OGS will not entertain any exceptions to Appendix A (Standard Clauses for New York State Contracts). OGS will also not entertain exceptions to the Solicitation or Appendix B (General Specifications) that are of a material and substantive nature.

Extraneous terms submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, license agreements, contracts or other documents) that are attached or referenced with submissions shall not be considered part of the Bid or resulting Contract, but shall be deemed included for informational or promotional purposes only.

#### 4.12 Bid Opening Results

OGS Procurement Services posts Bid information on the OGS Procurement Services website. The Bid Opening Results webpage makes available the list of bidders that responded to the Solicitation. Such information is anticipated to be available online within two business days after the Bid opening.

The Bid Opening Results Page is available at: <https://ogs.ny.gov/procurement/bid-opening-results-0>

#### 4.13 Bid Liability

The State of New York will not be held liable for any cost incurred by the Contractor for work performed in the production of a Bid or for any work performed prior to the formal execution of a Contract.

#### 4.14 Firm Offer

Bids must remain an effective offer, firm and irrevocable, for at least 90 calendar days from the due date, unless the time for awarding the Contract is extended by mutual consent of OGS and the Bidder. A Bid shall continue to remain an effective offer, firm and irrevocable, subsequent to such 90 calendar-day period until either tentative award of the Contract by OGS is made or withdrawal of the Bid in writing by the Bidder.

#### 4.15 NYS Reserved Rights

New York State reserves the right, in its sole discretion, to:

- A. Reject any or all Bids received in response to the Solicitation;
- B. Withdraw the Solicitation at any time at the sole discretion of the State;
- C. Make an award under the Solicitation in whole or in part;
- D. Disqualify any Bidder whose conduct and/or Bid fails to conform to the requirements of the Solicitation;
- E. Seek clarifications and revisions of the Bid;
- F. Amend the Solicitation prior to the Bid opening to correct errors or oversights, or to supply additional information as it becomes available;
- G. Direct Bidders, prior to the Bid opening, to submit Bid modifications addressing subsequent Solicitation amendments;
- H. Change any of the schedule dates with notification through the NYSCR;
- I. Eliminate any mandatory, non-material requirements that cannot be complied with by all of the prospective Bidders;
- J. Waive any requirements that are not material;
- K. Utilize any and all ideas submitted in the Bids received;
- L. Adopt all or any part of a Bidder's Bid in selecting the optimum configuration;
- M. Negotiate with a Bidder within the Solicitation requirements to serve the best interests of the State. This includes requesting clarifications of any or all Bids;
- N. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Bidder's Bid and/or to determine a Bidder's compliance with the requirements of the Solicitation;
- O. Select and award the Contract to other than the selected Bidder in the event of unsuccessful negotiations or in other specified circumstances as detailed in the Solicitation;
- P. Accept and consider for Contract Award Bids with non-material Bid Deviations or non-material Bid defects such as errors, technicalities, irregularities, or omissions;
- Q. Use any information which OGS obtains or receives from any source and determines relevant, in OGS's sole discretion, for the purposes of bid evaluation and Contractor selection;

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- R. Consider a proper alternative where an evidently incorrect reference/parameter/component/product/model/code number is stated by the State or the Bidder;
  - S. Reject an obviously unbalanced Bid as determined by the State; and
  - T. Conduct Contract negotiations with the next responsible Bidder, should the Agency be unsuccessful in negotiating with the selected Bidder;
  - U. Make no award for any Product, region, or lot, as applicable, for reasons including, but not limited to, unbalanced, unrealistic or excessive Bidder pricing, a change in Authorized User requirements and/or Products, or an error in the Solicitation (e.g., use of incorrect reference, pack size, description, etc.). In such case, evaluation and ranking of Bids may be made on the remaining Products, regions, or lots.
  - V. Offer a Bidder the opportunity to provide supplemental information or clarify its Bid, including the opportunity to explain or justify the balance, realism, and/or reasonableness of its pricing.
  - W. Award Contracts on a rolling or staggered start basis, either in whole or in part. Contracts awarded in this method shall be coterminous with the first Contract awarded as a result of this Solicitation.

#### **4.16 Incorporation**

Portions of the successful Bidder's Bid and of this Solicitation shall be incorporated into a final Contract, with a separate document executed by Contractor and OGS. A final Contract will be formalized either through a separate contract document or through a contract award letter incorporating the Bid, each having its own provision governing conflict of terms.

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## SECTION 5: METHOD OF AWARD

### 5.1 Method of Award

Awards shall be made to responsive and responsible Bidder(s) that meet the criteria in Section 2, Bidder Qualifications and appear on the NYSDOT Materials Bureau Approved List prior to receiving an award (if applicable). It is anticipated that award will be made to more than one bidder for each LOT (if applicable).

Contracts will be awarded only to responsive and responsible Bidders whose prices indicate that Products will be delivered at a reasonable price as determined by OGS Procurement Services. "Reasonable prices" may be determined by reviewing net prices offered to GSA, NASPO, prices on any previously awarded NYS Contract, pricing offered by other Bidders for this Solicitation, contracts with other state or government entities, etc.

The State reserves the right to require documentation to support the reasonableness of the prices offered and reserves the right to reject any Bidder that does not demonstrate reasonable pricing for this Solicitation.

At the time of the Bid opening, where possible, Bidder must provide copies of at least one governmental and/or municipal contract (GSA, NASPO, other State, etc.) that shows net pricing and FOB point (with the exception of current awarded Contractors under OGS Award 23056 or Award 23172). If such contracts are not available, the Bidder shall supply invoices of sales to large entities or corporations with repeat business detailing the discount and FOB point. New York State reserves the right to reject any Bidder that does not demonstrate reasonable pricing for this Solicitation.

### 5.2 Periodic Recruitment

This Solicitation allows for periodic recruitment of additional Contractors during the term of the Contract. Recruitment periods are optional at the discretion of the State. Additional recruitment periods will be advertised in the NYSCR. Bidder must register with the New York State Contract Reporter at <https://www.nyscr.ny.gov> in order to receive notifications regarding any periodic recruitments under this Solicitation. Bids shall be evaluated under substantially the same terms and conditions as the original Bids. Bidders shall also be required to submit necessary documentation for any additional applicable statutory requirements in effect at the time of the new Solicitation.

Once awarded a Contract, a Contractor may not resubmit a Bid for future consideration for LOTS covered by the scope of the awarded Contract. In addition, if a Bid is deemed non-responsive during the initial Solicitation or any recruitment period, a Bidder cannot reapply for a future Contract until the next recruitment period.

### **5.3 Procurement Instructions for Authorized Users**

The resultant Contracts will be issued under a multiple award structure. Authorized Users shall procure Products that best meet their form, function, and utility requirements.

Before proceeding with their purchase, Authorized Users shall check the list of Preferred Source offerings and are reminded that they must comply with State Finance Law, particularly § 162, regarding commodities/services provided by preferred source suppliers.

Pursuant to State Finance Law § 163(10)(c), at the time of purchase, Authorized Users must base their selection among multiple Contracts upon which is the most practical and economical alternative that is in the best interests of the State.

### **5.4 Notification of Award**

Tentative award of the Contract shall consist of written notice to that effect by OGS to a selected Bidder, who shall execute a Contract upon a determination by OGS that the Bidder is responsive and responsible.

Non-awardees will also be notified that their Bid was not selected for award.

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## SECTION 6: TERMS AND CONDITIONS

### 6.1 Contract Terms and Extension

- A. Base Term: Notwithstanding the provisions of Appendix B Section 22, Contract Creation/Execution, the base contract term shall begin on the later of (i) May 18, 2022, or (ii) the date of OSC approval of the final, executed contract documents and consistent with the MOU, and shall continue through and including May 17, 2027.
- B. Extensions. At the State's option, and subject to the approval of OSC and consistent with the MOU, the Contract may be extended for three (3) years, in increments as deemed to be in the best interest of the State. Whether the optional extensions are exercised is at the sole discretion of the State. A Contractor shall retain the right to decline a Contract extension offered under this section. Any Contract extension will be under the same terms and conditions, subject to any additional applicable statutory and policy requirements. Any extensions provided under this section shall apply in addition to any rights set forth in Appendix B, Contract Term – Extension.
- C. The Contract term provided for in this section shall extend six months beyond its termination date only for Authorized Users whose contracts must be registered with the Office of the New York City Comptroller. During the six-month period, the definition of Authorized User shall be deemed to refer only to Authorized Users whose contracts must be registered with the Office of the New York City Comptroller. This extension is in addition to any other extensions available under the Contract. The extension provided for in this paragraph shall be upon the then-existing terms and conditions; provided, however, during such extension an Authorized User, as defined in this paragraph, may agree to amend such terms and conditions solely to comply with changes in statutory requirements (e.g. changes in minimum, prevailing or living wages, or regulated services).

### 6.2 Short term Extension

This section shall apply in addition to any rights set forth in Appendix B, *Contract 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 30 calendar days upon notice to the Contractor with the same terms and conditions as the original Contract and any approved modifications. With the concurrence of the Contractor, the extension may be for a period of up to 90 calendar days in lieu of 30 calendar days. However, this extension automatically terminates should a replacement Contract be issued in the interim.



### 6.3 Price

Pricing will be collected using Attachment 1 – *Pricing* in accordance with the Instructions tab listed within Attachment 1.

Price shall include all customs duties and charges and be net, FOB destination any point within the State of New York, as designated by the Authorized User, including dock delivery (unloading of the product will be performed by the Authorized User, unless previously agreed by the vendor). Additional fees may be charged to the purchaser when delivery to point of use is not possible via dock, any other door, stairway or elevator freight service and/or when specialized service is requested in writing by the purchaser. Such costs shall be prepaid and added to the invoice. Authorized Users will not be charged for delivery to their building location since price is FOB destination; **Authorized User must be informed of the additional cost prior to delivery and agree to the additional charge.**

Bidders are encouraged to offer their best possible pricing; additionally, Authorized Users are required to use the Quick Quote process to obtain the best possible pricing. Contract prices are not-to-exceed for all LOTS and shall be firm except in the case of lowered pricing submitted using the Quick Quote process in accordance with Section 6.4, Quick Quotes, or price updates permitted in accordance with Section 6.5, Price Updates, of this Invitation for Bids.

If it is determined the Contractor is charging excessive amounts for specialized delivery services, the State may seek reimbursement for such amounts, may remove the Contractor from the list of eligible Bidders, and may cancel the Contract.

#### 6.3.1 Traffic Paint (Waterborne—Lead-Free): Product Offerings (Alternate Bids)

Bidder may make more than one offering per product for LOT I – White and LOT II – Organic Yellow Traffic Paint per bid. Bids which have more than one product offering per LOT should submit a separate Attachment 1 – *Pricing* for each product offering.

If a Bidder is submitting multiple Bids for different products for Traffic Paint (LOT I - White and/or LOT II – Organic Yellow), a separate Attachment 1 - *Pricing* labeled as “YOUR COMPANY NAME – PRODUCT #” will be required to be submitted for each product bid.

#### 6.3.2 Traffic Paint (Waterborne—Lead-Free): Return of Containers

Both 55-gallon and 275-gallon capacity containers remain the property of the Contractor and are to be removed **at no additional cost.**

Upon notification, Contractor shall be responsible for picking up and removing at their own expense, all drums and totes furnished by the Contractor during the Contract period. See Attachment 9 – *Specifications*, Section - *Packaging* for additional information.

## 6.4 Quick Quote

Authorized Users must select the appropriate Contractor to provide their particular product by using the Quick Quote worksheet form.

During the course of selecting and awarding one of the Contractors listed in this Solicitation, Authorized Users should try to obtain lower prices and Contractors may wish to lower their Contract prices for various reasons, i.e., excess supply, slow business, etc. Each Quick Quote situation is unique, and the price is firm for that particular purchase only. If Bid security is a concern, the Authorized User may require Bids to be sealed and/or opened publicly.

**The use of the Quick Quote Worksheet will be MANDATORY for all purchases made by any Authorized User through the Contract(s) resulting from this Invitation for Bids.**

Agencies using the Quick Quote form are required to award to the lowest responsive Bid meeting the Authorized User's requirements outlined in the requested quote, including guaranteed delivery. There are no negotiations permitted following the Quick Quote and prices cannot be changed once offered. If award is made to other than the lowest Bid, the Authorized User must prepare detailed documentation explaining the action taken for the failure to meet requirements (i.e., the low Contractor could not provide the product in the time frame required, Contractor did not have needed quantity, etc.). This explanation along with the Quick Quote responses must be made a part of the procurement record.

Contractors are not required to respond, or to lower their awarded "not-to-exceed" prices when they receive a Quick Quote. Prices quoted remain firm regardless of what the price adjustment is at the time of delivery.

The Quick Quote form will be published to the OGS website (on the contract award landing page) at the time of award.

## 6.5 Price Updates

Prices set forth in this Contract are firm through August 31<sup>st</sup>, 2022. Beginning September 1<sup>st</sup>, 2022 and every six months thereafter, the prices are subject to an increase or decrease in accordance with the provisions of this clause.

The prices shall be adjusted on the basis of the originally published Producer Price Indices (PPIs) specified in this section, published by the US Department of Labor, Bureau of Labor Statistics, using the weighting specified below. Any published figure used that is preliminary will not be updated should a different figure replace it as permanent in the future.

A base index shall be established using the month of November 2021. An adjusted index shall then be established by averaging the six-month period ending two months prior to the first price update date. The adjusted index will then become the base index for the price update period immediately following. Each succeeding six months will follow this format (including any contract extensions or renewals). The average adjusted index is then compared with the base index, and the resulting percentage of increase or decrease shall be applied to the contract prices. Price increases and decreases shall not exceed 5% per adjustment period.

<u>Effective Date for Adjusted Pricing</u>	<u>Base Index Period</u>	<u>Adjustment Index Period</u>
Sept 1, 2022	November 2021	Dec 2021 – May 2022
March 1, 2023	Dec 2021 – May 2022	Jun 2022 – Nov 2022
Sept 1, 2023	Jun 2022 – Nov 2022	Dec 2022 – May 2023
March 1, 2024	Dec 2022 – May 2023	Jun 2023 – Nov 2023
Sept 1, 2024	Jun 2023 – Nov 2023	Dec 2023 – May 2024
March 1, 2025	Dec 2023 – May 2024	Jun 2024 – Nov 2024
Sept 1, 2025	Jun 2024 – Nov 2024	Dec 2024 – May 2025
March 1, 2026	Dec 2024 – May 2025	Jun 2025 – Nov 2025
Sept 1, 2026	Jun 2025 – Nov 2025	Dec 2025 – May 2026
March 1, 2027	Dec 2025 – May 2026	Jun 2026 – Nov 2026

In the event a contract extension is implemented, subsequent price adjustments will follow the format indicated above. OGS will provide an updated table as needed.

The following US Department of Labor PPIs will be used in determining the price updates that will apply to Contracts awarded under this procurement:

**6.5.1 LOT I & LOT II - Traffic Paint (Waterborne – Lead-Free):**

<u>Index Name</u>	<u>Series ID#</u>
<p><b>Group:</b> Chemicals and allied products (Not Seasonally Adjusted)  <b>Item:</b> Special purpose coatings, incl. marine, industrial &amp; construction coatings</p>	WPU06210301
<p><b>Industry:</b> General freight trucking, long-distance LTL  <b>Product:</b> Primary services</p>	PCU484122484122p

**90% of the price update of awarded Contract prices will be adjusted** according to activity reported by the United States Department of Labor PPI for Special purpose coatings, incl. marine, industrial & construction coatings, Series ID#: WPU06210301, not seasonally adjusted.

**10% of the price update** of awarded Contract prices will be adjusted according to activity reported by the US Department of Labor, PPI Industry Data for General Freight Trucking. Series ID#: PCU484122484122p.

6.5.2 LOT III & LOT IV - Glass Spheres for Reflectorized Pavement Marking (Various Types):

<u>Index Name</u>	<u>Series ID#</u>
<b>Industry:</b> Glass product manufacturing made of purchased glass <b>Product:</b> primary products	PCU327215327215p
<b>Group:</b> Fuels and related products and power (Not Seasonally Adjusted) <b>Item:</b> Natural gas	WPU0531
<b>Group:</b> Chemicals and allied products (Not Seasonally Adjusted) <b>Item:</b> Other inorganic chemicals, nec	WPU06130283
<b>Industry:</b> General freight trucking, long-distance LTL (Not Seasonally Adjusted) <b>Product:</b> Primary services	PCU484122484122p

**55% of the price update** of awarded contract prices will be adjusted according to activity reported by the US Department of Labor, PPI Industry Data for Glass product mfg. made of purchased glass. Series ID#: PCU327215327215P

**20% of the price update** of awarded contract prices will be adjusted according to activity reported by the US Department of Labor, PPI Commodity Data for Fuels and related products and power-Natural Gas. Series ID#: WPU0531, not seasonally adjusted.

**15% of the price update** of awarded contract prices will be adjusted according to activity reported by the US Department of Labor, PPI for the group chemicals and allied products, other inorganic chemicals. Series ID#: WPU06130283, not seasonally adjusted.

**10% of the price update** of awarded contract prices will be adjusted according to activity reported by the US Department of Labor, PPI Industry Data for General Freight Trucking. Series ID#: PCU484122484122p

Should any referenced PPIs become discontinued during the course of the Contract, they will be replaced by alternative PPIs also published by the US Department of Labor, Bureau of Labor Statistics, and adjustments will be calculated based on the same methodology as outlined above, but with the data from the new replacement index, and adjustments will be calculated based on the latest six months of data available in the month preceding the effective date of the price adjustments.

The Office of General Services, Procurement Services will notify all interested parties of effected price adjustments by way of a Contract update.

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## 6.6 Product Addition and Removal – Traffic Paint (Waterborne – Lead-Free)

In order to add new traffic paint product(s), the Contractor must demonstrate that the traffic paint product to be added:

- has been approved by NYSDOT Materials Bureau
- meets the scope as defined in Section 1.1, *Overview & Scope*

Contractors shall submit their updated traffic paint product information to the OGS Procurement Services pursuant to the requirements of this section for review and written approval prior to issuing to Authorized Users.

Contract documents will be updated to include the new approved traffic paint product(s) upon approval by OGS. Any request for traffic paint product update not received in accordance with this section shall be deemed denied.

The Contractor shall provide OGS with one electronic copy of the updated traffic paint product information. No traffic paint product update will be granted to any Contractor who has outstanding Sales Reports, Proof of Insurance or any other documentation that is required under the resulting contract.

Contractor may request the removal of a traffic paint product at any time.

## 6.7 Best Pricing Offer

During the Contract term, if the Commissioner becomes aware that the Contractor is selling substantially the same or a smaller quantity of a Product outside of this Contract upon the same or similar terms and conditions as that of this Contract at a lower price to a federal, state or local governmental entity, the price under this Contract, after consultation with the Contractor, may be reduced to a lower price on a prospective basis at the discretion of the Commissioner. The Commissioner reserves the right to request information to verify pricing for the purposes of this clause.

## 6.8 Price Structure

If, during the Contract Term, the Contractor is unable or unwilling to meet contractual requirements in whole or in part based on the price structure of the Contract, it shall immediately notify the Office of General Services, Procurement Services in writing. Such notification shall not relieve the Contractor of its responsibilities under the Contract. The State may, but is not required to, consider an equitable adjustment in the Contract terms and/or pricing in the circumstances outlined in Appendix B, *Savings/Force Majeure*.

Should the Commissioner in his or her sole discretion determine during the Contract Term that (i) the Contract price structure is unworkable, detrimental, or injurious to the State, or (ii) the Contract price structure results in prices which are unreasonable, excessive, or not truly reflective of current market conditions, and no adjustment in the Contract terms and/or pricing is mutually agreeable, the State may terminate the Contract upon 10 business days written notice mailed to the Contractor.

## 6.9 Volume Discounts

Bidders may offer additional volume discounts. Volume discounts may be applied per purchase order, cumulatively per customer agency, and cumulatively statewide. The bidder shall indicate the basis for applying the volume discount(s) in Attachment 5 – *Bidder Information Questionnaire*.

Volume discounts shall be defined and applied as follows:

1. Purchase order volume discounts shall be additional discounts applied to individual purchase orders over a specified dollar amount.
2. Cumulative agency volume discount shall be additional discounts applied to all future orders made by an individual agency once an established volume has been met by that agency.
3. Cumulative statewide volume discounts shall be additional discounts applied to all future orders for all state and non-state orders once an established volume has been met under this contract.

Volume discounts shall not be considered when determining the lowest responsive and responsible bidder.

## 6.10 Ordering

Purchase Orders shall be made in accordance with the terms set forth in Appendix B, *Purchase Orders*. Authorized Users may submit orders over the phone, and, if available, may submit orders electronically via web-based ordering, e-mail, or facsimile at any time. Orders submitted shall be deemed received by Contractor on the date submitted.

All orders shall reference Contract number, requisition, and/or Purchase Order number (if applicable). Upon Contractor's receipt of an order, confirmation is to be provided to the Authorized User electronically or via facsimile. Order confirmation should be sufficiently detailed, and include, at a minimum, purchase price, date of order, delivery information (if applicable), Authorized User name, and sales representative (if applicable).

### 6.10.1 Traffic Paint (Waterborne—Lead-Free)

Authorized Users should indicate the following information:

- Purchase orders where deferred shipments are requested by the Authorized User shall clearly detail the requirement dates.
- Contractor must promptly inform the buyer of any deferred shipment in which the requested delivery date extends beyond a current pricing period into a new scheduled price update period, so that proper pricing will be applied at the time of invoicing.
- For non-NYSDOT deferred orders, where the requested shipping dates are in excess of 90 days, a notation of pre-approval by the contractor shall be clearly noted, including date, time, and name of authorizing party. If approval was made in writing, a copy of the memo should be attached.

### **6.10.2 Glass Spheres for Reflectorized Pavement Marking**

Authorized Users should indicate the following information:

- Type and gradation required
- Palletization requirements
- Special Marking requirements
- Instructions and address for submission of SDS

### **6.11 Purchasing Card Orders**

If the Contractor accepts orders using the State's Purchasing Card (see Appendix B, Purchasing Card), also referred to as the Procurement Card, the Contractor shall not charge or bill the Authorized User for any additional charges related to the use of the Purchasing Card, including but not limited to processing charges, surcharges or other fees.

### **6.12 Minimum Order**

#### **6.12.1 Traffic Paint (Waterborne—Lead Free)**

The minimum order for LOTS I & II is 3,000 gallons. This minimum may be achieved through any combination of items (totes, drums, pails) for a single location.

Contractor may elect to honor orders for less than the minimum order. For such orders, at the Contractor's option and with the agreement of the Authorized User, shipping costs from the Contractor's address (as stated in bid) may be added to invoice with a copy of the freight bill. Shipping costs are to be prepaid by Contractor and such orders are to be shipped on an FOB destination basis. All such orders must be shipped by the most economical method for the proper delivery of the product unless special instructions are stated on the order by the agency.

#### **6.12.2 Glass Spheres for Reflectorized Pavement Marking**

The minimum order for LOTS III & IV is 10,000 lbs net weight and the weight may be assorted among sphere types within the confines of the spheres overall classification.

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.

Contractors may elect to honor orders for less than the minimum order. Bidders shall indicate a willingness to provide less than the minimum order in Attachment 5 - *Bidder Information Questionnaire*.

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## 6.13 Minimum Production Batch Size

### 6.13.1 Traffic Paint (Waterborne—Lead Free)

Minimum production batch size shall be 2,000 gallons for each color of paint. A batch is further defined as appropriate in the quality assurance section located in Attachment 9 – *Specifications*, Section - *Quality Assurance Requirements*.

Contractor may elect to honor orders for less than the minimum order. Bidders shall indicate a willingness to provide less than the minimum order in Attachment 5 - *Bidder Information Questionnaire*.

## 6.14 Invoicing and Payment

Invoicing and payment shall be made in accordance with the terms set forth in Appendix B, *Contract Invoicing*.

The Contractor is required to provide the Authorized User with one invoice for each Purchase Order at the time of delivery. The invoice must include detailed line item information to allow Authorized Users to verify that pricing at point of receipt matches the Contract price on the original date of order. At a minimum, the following fields must be included on each invoice:

- Contractor Name
- Contractor Billing Address
- Contractor Federal ID Number
- NYS Vendor ID Number
- Account Number
- NYS Contract Number
- Name of Authorized User indicated on the Purchase Order
- NYS Agency Unit ID (if applicable)
- Authorized User's Purchase Order Number
- Order Date
- Invoice Date
- Invoice Number
- Invoice Amount
- Product Descriptions
- Unit Price
- Quantity
- Unit of Measure
- Dates of Service (if applicable)

Cost centers or branch offices within an Authorized User may require separate invoicing as specified by each Authorized User. The Contractor's billing system shall be flexible enough to meet the needs of varying ordering systems in use by different Authorized Users. Visit the following link for further guidance for vendors on invoicing: <https://bsc.ogs.ny.gov/nys-vendors>.



## 6.15 Product Delivery

Delivery of all Contract Products shall be made in accordance with Appendix B, *Product Delivery and Shipping/Receipt of Product*.

### 6.15.1 Traffic Paint (Waterborne—Lead Free)

#### General

Delivery shall be expressed by the average (or usual) number of calendar days required to ship and complete the product delivery after receipt of a purchase order. The vendor shall be responsible for the delivery of product ordered to any location within New York State. Product will be required as soon as possible and delivery may be considered by an agency issuing a purchase order.

Unless otherwise stated on purchase order, delivery is required within 30 calendar days after contractor's receipt of purchase order. **Authorized Users may not** without prior written consent of the contractor **demand** delivery prior to 30 days after Contractor's receipt of said order.

Contract users may request scheduled deferred deliveries. With the exception of NYS Department of Transportation orders, all schedules requiring delivery to be **delayed beyond 90 days** after Contractor's receipt of order must have the prior approval of the related Contractor and with such allowance noted on the given purchase order. All deferred shipping may be subject to a price update if the requested shipment overlaps scheduled price update periods.

Each individual instance of Contractor's failure to conform to the above delivery requirements **plus 10 calendar days** (grace period) shall constitute sufficient reason to allow the affected agency to request OGS review to assess the potential for the application of Liquidated Damages. Resulting Contractor(s) are cautioned that repeated failure to deliver within the guaranteed delivery period will be sufficient cause for the OGS Procurement Services to cancel the Contract or any unit portion thereof and authorize open market purchase of applicable requirements charging any increased cost over Contract price to the Contractor's account, without the need to await passage of the stated grace period.

#### 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 delivery time, 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. Notification does not negate Contractor's responsibility for shipment of product as soon as possible, nor the conditions noted under Invitation for Bids, Section - *Liquidated Damages*. Should the delay not be acceptable to the Authorized User, appropriate contract default proceedings will be initiated. Failure to supply timely written notification of delay may be cause for default proceedings.

All correspondence on shipping dates and delivery time shall be directed to the ordering entities' specified contact person.

Deliveries shall be made inside the yard facility at destinations as indicated on the purchase order. Advance notice of pending shipment shall be issued in writing to the buyer at least **7 days prior to delivery**, unless shipment is being made in under one week from receipt of order. If this situation occurs, Contractor shall notify the buyer of the shipment date as soon as it is scheduled.

**Actual physical arrival and delivery of material must be scheduled by the carrier, contacting and coordinating with the recipient no more than 48 hours prior to a trucks arrival at the delivery site.** Delivery will be scheduled no earlier than 7:00 a.m. or later than 3:00 p.m. and will have a two-hour window of opportunity within those parameters, Tuesday through Thursday, excluding Holidays, or as otherwise agreed to as mutually acceptable between the carrier and recipient. **Delivery will only be accepted within the time period scheduled.** At the discretion of the Authorized User, shipments arriving outside of the scheduled time frame may be expected to reschedule the shipment (if late) or return at the originally scheduled time (if early). Any and all changes required as a result of such arrivals are at the carrier's expense.

**Delivery Condition**

Contractor shall make no shipment that exposes the product at any time during transit to conditions detrimental to the product. Product must be delivered strictly in accordance with specifications and shall be "Ready for Use." In the event that an item is delivered with a deviation or deficiency, Contractor shall correct such deficiencies **within four (4) business days** of written notification of said deficiency or deviation. Otherwise the State has the option of making the corrections independently at Contractor's expense and also imposing the Liquidated Damages clause as found herein.

**Delivery Certification**

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

**6.15.2 Glass Spheres for Reflectorized Pavement Marking**

**General**

Delivery shall be expressed by the average (or usual) number of calendar days required to ship and complete the product delivery after receipt of a purchase order. Product will be required as soon as possible and delivery may be considered by an agency issuing a purchase order.

**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 delivery time, 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 delay not be acceptable to the Authorized User, appropriate Contract default proceedings will be initiated. Failure to supply timely written notification of delay may be cause for default proceedings.

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

**Delivery Conditions**

Contractor shall be responsible to make no shipment of the product that will be exposed to conditions during transit, detrimental to the product. 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 to delivery of product. In the event deficiencies are later noted and a properly signed receipt is not available, Contractor will be responsible.

**Certificate of Analysis**

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.

**Shipping, Packing, Marking, and Palletization**

Shipping shall be only by covered trailers in order to maintain sphere dryness. The glass spheres shall be packed either in bags containing 50 lbs. net or cardboard boxes containing 2,000 lbs. net. Contractor shall be responsible for the proper delivery of the glass spheres, in specified containers. The containers shall not affect its contents. Bags or boxes of glass spheres shall not contain foreign contaminants.

If bags are used, they shall be either a standard cemented center seam, plastic lined, burlap bag, or plastic lined paper bags. A bag shall contain 50 lbs. net weight. If required by ordering agency, the bags shall be packed and delivered on disposable pallets, forty (40) bags to a pallet (2,000 lbs.).

If cardboard boxes are used, they should be moisture resistant, multi-wall, five (5) wall box constructed new cardboard containers consisting of a box and a poly-liner to exclude moisture. **Boxes must have sufficient integrity to be stackable with visible indication of maximum stacking quantity.** Reusable boxes are unacceptable. Cardboard boxes shall be delivered on a skid or pallet. All pallets shall be constructed to allow use of forklifts.

The bags and boxes shall be marked with the name and address of the manufacturer and name and net weight of the material, the glass sphere coating type, the lot and/or batch number, and the date of manufacture (mm / yy).

The ordering agency shall have sufficient justification to reject bags or boxes of glass spheres that are: covered with water, supplied in improper containers, contaminated with foreign materials, or supplied on broken skids or pallets. Rejected glass spheres shall be replaced within seven (7) calendar days of the date of rejection notice.

**LOT IV: Glass Spheres with Drying Agent**

The packages shall be marked with the name and address of the manufacturer and name and net weight of the material, the material name, the lot and/or batch number, and the date of manufacture (mm /yy) and be secured on disposable pallets, 40 bags to a pallet (2,000 lbs.). The pallets shall be constructed to allow use of forklifts.

Shipping shall be only by covered trailers in order to maintain product dryness.

The compound shall be packed in bags and Contractor shall be responsible for the proper delivery thereof. The containers shall not affect its contents, nor contain foreign contaminants. Bags shall be either standard cemented center seam, plastic-lined burlap bags, or plastic-lined paper bags. A bag shall contain 50 lbs. net weight.

The ordering agency shall have sufficient justification to reject bags of compound that are covered with water, supplied in improper containers, contaminated with foreign materials, or supplied on broken skids or pallets. Rejected items shall be replaced within seven (7) calendar days of the date of rejection notice.

**6.16 Liquidated Damages**

In the event of a delay or default in any delivery for items contracted under Lots I and II, providing such delay or default is not directly attributable to a material fault of the ordering agency, an agency shall be entitled to and shall assess against the vendor as liquidated damages, a sum calculated as follows:

Two-hundred fifty dollars (\$250.00) per business day, not as a penalty but as liquidated damages, for each color of paint, to compensate for delay and other losses, detriments and inconveniences attendant upon such delay from the grace period, commencing from the time delivery was due under the Contract. Saturdays, Sundays, and NYS Holidays will be excluded from the computations for the assessment of Liquidated Damages.

A grace period of ten (10) business days commencing on and including the Contract date for delivery, shall be extended to the vendor prior to the assessment of such liquidated damages. Assessment of liquidated damages will then commence on the forty-fifth (45th) calendar day after placement of the purchase order by mail, or 41 calendar days after placement electronically. Notice is hereby given to the vendor that despite the extensions of the grace period herein specified, time shall be and is of the essence in regard to the delivery of these products to the Authorized User.

The actual delivery date of each color will be used in computing the total amount of liquidated damages on a purchase order. Liquidated damages, if assessed, shall be deducted from payments due Contractor for each color of paint on each invoice for purchase orders that are delivered late.

### 6.16.1 Additional Notes for Traffic Paint (Waterborne –Lead-Free)

Whereas shipments of paint may not commence at the beginning of an annual painting season until the season's initial manufacturing run has been tested and independently certified as meeting the required specifications, such testing and any delays caused as a result of the testing process negate the liquidated damages clause.

Once initial shipments have been approved for release, the terms of this clause become active. However, should any such initial delays be caused by the failure of Contractor to deliver the required sample requirements in a timely manner, or of the product to meet the stated specifications and requirements, Contractor may be held liable for Liquidated Damages as stated here in.

### 6.17 Product Returns and Exchanges

In addition to the provisions of Appendix B, *Title and Risk of Loss*, *Product Substitution*, and *Rejected Product*, Products returned or exchanged due to quality problems, duplicated shipments, outdated Product, incorrect Product shipped, Contractor errors otherwise not specified, or Products returned or exchanged due to Authorized User errors, shall be replaced with specified Products or the Authorized User shall be credited or refunded for the full purchase price.

Products shall be replaced within 10 business days of written notification to the Contractor of the Authorized User's intent to return or exchange the Product. Contractor can charge only a restocking fee for Product returned or exchanged due to Authorized User error that is determined not to be suitable for resale; the restocking fee cannot exceed the net price of the returned or exchanged Product.

Any credit or refund shall be applied against the next bill/invoice submitted by the Contractor to the Authorized User. If no credit or refund, or only a partial credit or refund, is made in such fashion, the Contractor shall pay to the Authorized User the amount of such credit or refund or portion thereof still outstanding, within 30 calendar days of demand.

### 6.18 Unanticipated Excessive Purchase

The State reserves the right to negotiate lower pricing, or to advertise for Bids, for any unanticipated excessive purchase.

### 6.19 Contract Administration

The Bidder shall provide a sufficient number of Customer Service employees who are knowledgeable and responsive to Authorized User needs and who can effectively service the Contract. Bidder shall also provide an Emergency Contact in the event of an emergency occurring after business hours or on weekend/holidays.

Bidder shall provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Information regarding the Customer Service, Emergency Contact, and Contract Administrator shall be set forth in Attachment 5 – *Bidder Information Questionnaire*. Contractor must notify OGS within five Business Days if its Contract Administrator, Emergency Contact, or Customer Service employees change, and provide an interim contact person until the position is filled. Changes shall be submitted electronically via e-mail to the OGS Contract Management Specialist.

## 6.20 NYS Financial System (SFS)

New York State is currently operating on an Enterprise Resource Planning (ERP) system, Oracle PeopleSoft software, referred to as the Statewide Financial System (SFS). SFS is currently on PeopleSoft Financials version 9.2. SFS supports requisition-to-payment processing and financial management functions.

The State is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure Products in SFS. This application provides catalog capabilities. Contractors with Centralized Contracts have the ability to provide a “hosted” or “punch-out” catalog that integrates with SFS and is available to Authorized Users via a centralized eMarketplace website. Additional information may be found at:

<https://ogs.ny.gov/procurement/emarketplace>

There are no fees required for a Contractor’s participation in the catalog site development or management. Upon completion and activation of an on-line catalog, State Agencies will process their orders through the SFS functionality and other Authorized Users can access the catalog site to fulfill orders directly.

The State may be implementing additional PeopleSoft modules in the near future. Further information regarding business processes, interfaces, and file layouts currently in place may be found at: <http://www.sfs.ny.gov> and <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

## 6.21 N.Y. State Finance Law § 139-I

Pursuant to N.Y. State Finance Law § 139-I, every bid made on or after January 1, 2019 to the State or any public department or agency thereof, where competitive bidding is required by statute, rule or regulation, for work or services performed or to be performed or goods sold or to be sold, and where otherwise required by such public department or agency, shall contain a certification that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of N.Y. State Labor Law § 201-g.

N.Y. State Labor Law § 201-g provides requirements for such policy and training and directs the Department of Labor, in consultation with the Division of Human Rights, to create and publish a model sexual harassment prevention guidance document, sexual harassment prevention policy and sexual harassment prevention training program that employers may utilize to meet the requirements of N.Y. State Labor Law § 201-g. The model sexual harassment prevention policy, model sexual harassment training materials, and further guidance for employers, can be found online at the following URL: <https://www.ny.gov/combating-sexual-harassment-workplace/employers>.

Pursuant to N.Y. State Finance Law § 139-I, any bid by a corporate bidder containing the certification required above shall be deemed to have been authorized by the board of directors of such bidder, and such authorization shall be deemed to include the signing and submission of such bid and the inclusion therein of such statement as the act and deed of the bidder.

If the Bidder cannot make the required certification, such Bidder shall so state and shall furnish with the bid a signed statement that sets forth in detail the reasons that the Bidder cannot make the certification. After review and consideration of such statement, OGS may reject the bid or may decide that there are sufficient reasons to accept the bid without such certification.

The certification required above can be found on Attachment 2 – *NYS Required Certifications*, which Bidder must submit with its bid.

**6.22 Insurance**

The Contractor shall maintain in force at all times during the terms of the Contract, policies of insurance pursuant to the requirements outlined in Attachment 4 – *Insurance Requirements*.

**6.23 Report of Contract Usage**

Contractor shall submit Attachment 8 – *Report of Contract Usage* including total sales to Authorized Users of this Contract by Contractor, and all authorized resellers, dealers and distributors, if any, in accordance with the schedule listed in the table below.

<u>Report</u>	<u>From</u>	<u>To</u>	<u>Report Due Date</u>
1	Contract Start	9/30/2022	10/15/2022
2	10/1/2022	3/31/2023	4/15/2023
3	4/1/2023	9/30/2023	10/15/2023
4	10/1/2023	3/31/2024	4/15/2024
5	4/1/2024	9/30/2024	10/15/2024
6	10/1/2024	3/31/2025	4/1/2025
7	4/1/2025	9/30/2025	10/15/2025
8	10/1/2025	Contract End	7/1/2026

Contractors shall specify if any authorized resellers, dealers or distributors are NYS Certified Minority- and/or Women-Owned Business Enterprises (MWBs), small business enterprises (SBEs), or Service-Disabled Veteran-Owned Businesses (SDVOBs).

The report is to be submitted electronically via e-mail in Microsoft Excel to OGS Procurement Services, to the attention of the individual listed on the front page of the Contract Award Notification and shall reference the Contract Group Number, Award Number, Contract Number, Sales Period, and Contractor's name.

The report in Attachment 8 – *Report of Contract Usage* contains the minimum information required. Additional related sales information, such as detailed user purchases may be required by OGS and must be supplied upon request. Failure to submit reports on a timely basis may result in Contract cancellation and designation of Contractor as non-responsible.

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**6.24 Contractor Requirements and Procedures for Participation by New York State Certified Minority- and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women**

I. New York State Law

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”), the New York State Office of General Services (“OGS”) is required to promote opportunities for the maximum feasible participation of New York State-certified Minority- and Women-Owned Business Enterprises (“MWBEs”) and the employment of minority group members and women in the performance of OGS contracts.

II. General Provisions

- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for MWBEs. Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, State, or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, a finding of non-responsibility, breach of contract, withholding of funds, suspension or termination of the Contract, and/or such other actions or enforcement proceedings as allowed by the Contract and applicable law.

III. Equal Employment Opportunity (EEO)

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000 for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to, the contracting State agency (the “Work”) except where the Work is for the beneficial use of the Contractor.
  - 1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work



or the provision of services or any other activity that is unrelated, separate, or distinct from the Contract; or (ii) employment outside New York State.

2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor's equal employment opportunity policy. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.

**B. Form EEO 100 – Staffing Plan**

To ensure compliance with this section, the Contractor agrees to submit, or has submitted with the Bid, a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.

**C. Form EEO - 101 - Workforce Utilization Reporting Form (Commodities and Services) ("Form EEO-101-Commodities and Services")**

1. The Contractor shall submit, and shall require each of its subcontractors to submit, a Form EEO-101-Commodities and Services to OGS to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Form EEO-101-Commodities and Services must be submitted electronically to OGS at [EEO\\_CentCon@ogs.ny.gov](mailto:EEO_CentCon@ogs.ny.gov) on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January.
2. Separate forms shall be completed by Contractor and all subcontractors.
3. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.

- D. Contractor shall comply with the provisions of the Human Rights Law and all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal and conviction and prior arrest.**

IV. Contract Goals

A. For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers, or suppliers to Contractor. Contractor is, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women’s Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

B. Good Faith Efforts

Pursuant to 5 NYCRR § 142.8, evidence of good faith efforts shall include, but not be limited to, the following:

1. A list of the general circulation, trade, and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers, copies of such solicitations, and any responses thereto.
2. A list of the certified MWBEs appearing in the Empire State Development (“ESD”) MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with, or obtaining supplies from, certified MWBEs.
4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
5. Dates of any pre-bid, pre-award, or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
6. Other information deemed relevant to the request.

V. Fraud

Any suspicion of fraud, waste, or abuse involving the contracting or certification of MWBEs shall be immediately reported to ESD’s Division of Minority and Women’s Business Development at (855) 373-4692.

ALL FORMS ARE AVAILABLE AT: <https://ogs.ny.gov/MWBE>

**6.25 Participation Opportunities For New York State Certified Service-Disabled Veteran Owned Businesses**

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOBs”), thereby further integrating such businesses into New York State’s economy. OGS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified SDVOBs have opportunities for maximum feasible participation in the performance of OGS contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders/Contractors are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Bidder/Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <https://ogs.ny.gov/Veterans/>

Bidder/Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veteran’s Business Development at 518-474-2015 or [VeteranDevelopment@ogs.ny.gov](mailto:VeteranDevelopment@ogs.ny.gov) to discuss methods of maximizing participation by SDVOBs on the Contract.

ALL FORMS ARE AVAILABLE AT: <https://ogs.ny.gov/Veterans/>

## **6.26 Use of Recycled or Remanufactured Materials**

New York State supports and encourages Contractors to use recycled, remanufactured or recovered materials in the manufacture of Products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product or packaging unless such use is precluded due to health or safety requirements or Product specifications contained herein. Refurbished or remanufactured components or Products are required to be restored to original performance and regulatory standards and functions and are required to meet all other requirements of this Solicitation. Warranties on refurbished or remanufactured components or Products must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment. See Appendix B, *Remanufactured, Recycled, Recyclable or Recovered Materials*.

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## 6.27 Environmental Attributes and NYS Executive Order Number 4

New York State is committed to environmental sustainability and endeavors to procure Products with reduced environmental impact. One example of this commitment may be found in Executive Order No. 4 (Establishing a State Green Procurement and Agency Sustainability Program), which imposes certain requirements on State Agencies, authorities, and public benefit corporations when procuring Products. More information on Executive Order No. 4, including specifications for offerings covered by this Contract, may be found at <https://ogs.ny.gov/greenny/>. State entities subject to Executive Order No. 4 are advised to become familiar with the specifications that have been developed in accordance with the Order, and to incorporate them, as applicable, when making purchases under this Contract.

## 6.28 Consumer Products Containing Mercury

Contractor shall comply with the requirements of Title 21 of Article 27 of the NYS Environmental Conservation Law regarding restrictions on the sale, purchasing, labeling and management of any products containing elemental mercury under this Contract.

## 6.29 Diesel Emission Reduction Act

Pursuant to N.Y. Environmental Conservation Law § 19-0323 (the “Law”), it is a requirement that heavy duty diesel vehicles in excess of 8,500 pounds use the best available retrofit technology (“BART”) and ultra-low sulfur diesel fuel (“ULSD”). The requirement of the Law applies to all vehicles owned, operated by or on behalf of, or leased by State Agencies and State or regional public authorities. It also requires that such vehicles owned, operated by or on behalf of, or leased by State Agencies and State or regional public authorities with more than half of its governing body appointed by the Governor utilize BART.

The Law may be applicable to vehicles used by Contractors “on behalf of” State Agencies and public authorities and require certain reports from Contractors. All heavy duty diesel vehicles must have BART by the deadline provided in the Law. The Law also provides a list of exempted vehicles. Regulations set forth in 6 NYCRR Parts 248 and 249 provide further guidance. The Bidder hereby certifies and warrants that all heavy duty vehicles, as defined in the Law, to be used under this Contract, will comply with the specifications and provisions of the Law, and 6 NYCRR Parts 248 and 249.

## 6.30 Overlapping Contract Products

Products available under the resulting Contract may also be available from other New York State Contracts. Authorized Users will be advised to select the most cost-effective procurement alternative that meets their program requirements and to maintain a procurement record documenting the basis for this selection.

### 6.31 Preferred Source Products

Section 162 of the State Finance Law requires that Authorized Users afford first priority to the Products of Preferred Source suppliers such as Corcraft (the marketplace name for the NYS Department of Corrections and Community Supervision, Division of Industries), New York State Preferred Source Program for People who are Blind (NYSPSP), and New York State Industries for the Disabled (NYSID), and others determined by law, when such Products meet the form, function and utility of the Authorized User.

Some Products in the resultant Contract may be available from one or more Preferred Sources. An Authorized User must determine if a particular Product is approved for a Preferred Source and follow the requirements of State Finance Law § 162(3) or (4)(b), respectively, before engaging the Contractor.

### 6.32 NYS Vendor Responsibility

OGS conducts a review of prospective Contractors to provide reasonable assurances that the Bidder is responsive and responsible. A For-Profit Business Entity Questionnaire (hereinafter "Questionnaire") is used for non-construction Contracts and is designed to provide information to assess a Bidder's responsibility to conduct business in New York based upon financial and organizational capacity, legal authority, business integrity, and past performance history. By submitting a Bid, Bidder agrees to fully and accurately complete the Questionnaire. The Bidder acknowledges that the State's execution of the Contract will be contingent upon the State's determination that the Bidder is responsible, and that the State will be relying upon the Bidder's responses to the Questionnaire, in addition to all other information the State may obtain from other sources, when making its responsibility determination.

OGS recommends each Bidder file the required Questionnaire online via the New York State VendRep System. To enroll in and use the VendRep System, please refer to the VendRep System Instructions and User Support for Vendors available at the Office of the State Comptroller's (OSC) website at <http://www.osc.state.ny.us/vendors/index.htm> or to enroll, go directly to the VendRep System online at <https://www.osc.state.ny.us/state-vendors/vendrep/vendrep-system>.

Vendors must provide their NYS Vendor ID Number when enrolling. For information on how to request assignment of an NYS Vendor ID, see the *NYS Vendor File Registration* section. OSC provides direct support for the VendRep System through user assistance, documents, online help, and a help desk. The OSC Help Desk contact information is located at <http://www.osc.state.ny.us/portal/contactbuss.htm>. Bidders opting to complete and submit the paper questionnaire can access this form and associated definitions via the OSC website at [http://www.osc.state.ny.us/vendrep/forms\\_vendor.htm](http://www.osc.state.ny.us/vendrep/forms_vendor.htm).

In order to assist the State in determining the responsibility of the Bidder prior to Contract award, the Bidder must complete and certify (or recertify) the Questionnaire no more than six (6) months prior to the Bid due date. A Bidder's Questionnaire cannot be viewed by OGS until the Bidder has certified the Questionnaire. It is recommended that all Bidders become familiar with all of the requirements of the Questionnaire in advance of the Bid opening to provide sufficient time to complete the Questionnaire.

The Bidder agrees that if it is awarded a Contract the following shall apply:

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

The Commissioner of OGS, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of OGS issues a written notice authorizing a resumption of performance under the Contract.

The Contractor agrees that if it is found by the State that Contractor's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Contract may be terminated by the Commissioner of OGS at the Contractor's expense where the Contractor is determined by the Commissioner of OGS to be non-responsible. In such event, the Commissioner of OGS may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

### **6.33 NYS Tax Law Section 5-a**

Tax Law § 5-a requires certain Contractors awarded State Contracts for commodities, services and technology valued at more than \$100,000 to certify to NYS Department of Taxation and Finance ("DTF") that they are registered to collect New York State and local sales and compensating use taxes. The law applies to Contracts where the total amount of such Contractors' sales delivered into New York State is in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and Subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

A Contractor is required to file the completed and notarized Form ST-220-CA with the Bid to OGS certifying that the Contractor filed the ST-220-TD with DTF. Only the Form ST-220-CA is required to be filed with OGS. The ST-220-CA can be found at [https://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf). The ST-220-TD can be found at [https://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](https://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf). Contractor should complete and return the certification forms within five (5) business days of request (if the forms are not completed and returned with Bid submission). Failure to make either of these filings may render a Contractor non-responsive and non-responsible. Contractor shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

The ST-220-TD only needs to be filed once with DTF, unless the information changes for the Contractor, its affiliates, or its Subcontractors.

Vendors may call DTF at 518-485-2889 with questions or visit the DTF web site at <https://www.tax.ny.gov/> for additional information.

### 6.34 “OGS or Less” Guidelines

Purchases of the Products included in the Solicitation and resulting Contract are subject to the “OGS or Less” provisions of State Finance Law § 163(3)(a)(v). 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 NYSCR, prior approval of the Office of the State Comptroller and competitive bidding of requirements exceeding the discretionary threshold. State Agencies should refer to Procurement Council Guidelines for additional information.

### 6.35 Non-State Agencies Participation in Centralized Contracts

New York State political subdivisions and others authorized by New York State law may participate in Centralized 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 Appendix B, *Participation in Centralized Contracts*. 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 (<https://online.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 NYS Procurement Services Customer Services at 518-474-6717.

### 6.36 Extension of Use

Any Contract resulting from this Solicitation may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York 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.

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## 6.37 Resellers

### A. Definitions

Reseller is a company or individual (merchant) that purchases goods or services with the intention of selling them rather than consuming or using them. Also known as Value Added Reseller (VAR) or channel partner. Resellers must be eligible to quote statewide, independently and lower than manufacturer (Contract) pricing for procurements under resulting Contracts. Reseller must also be able to accept orders, invoice and receive payment for Products.

NOTE: This clause is not applicable to manufacturer's authorized resellers that submit a bid and are awarded as a prime contract holder on this contract.

### B. Conditions of Reseller Participation

Resellers must be approved in advance by the State as a condition of eligibility under the Contract. The State also reserves the right to rescind any such participation or request that Contractor name additional Resellers, in the best interests of the State, at the State's sole discretion, at any time. Contractor shall have the right to qualify Resellers and their participation under this Contract by product line, contracting program (e.g., government/educational sales), geographic region, size/sales volume, technical training or other criteria ("qualifying criteria"), provided that:

1. such qualifying criteria are uniformly applied to all potential Resellers based upon Contractor's established, neutrally applied commercial/governmental program criteria, and not to a particular procurement;
2. all general categories of qualifying criteria must be disclosed by the Contractor to the State, in advance, at the beginning of the Contract term;
3. those qualifying criteria met by the Reseller must be identified in Reseller designations submitted by email to the OGS Procurement Services Contract Manager at the time that Reseller approval is requested; and,
4. Immediate advance notice is provided to OGS in the event that a change in Reseller's status occurs during the Contract term.

All Resellers who have been approved in accordance with the foregoing paragraph shall be eligible to quote lower pricing for procurements under this Contract which meet their qualifying criteria. Contractor warrants and represents that it shall not, directly or indirectly, by agreement, communication or any other means, restrict any Reseller's participation or ability to quote a particular order.

### C. Designation of Resellers

When Resellers are submitted for approval, Contractor must provide the State, in advance, with all necessary ordering information, billing addresses and Federal Identification numbers in the format requested by email. Contractor shall also specify whether orders must be placed directly with Contractor, or may be placed directly with designated Resellers.



**D. Responsibility for Reporting/Performance**

Contractor shall be fully liable for a Reseller's performance and compliance with all Contract terms and conditions. Product purchased through a Reseller must be reported by Contractor in the required sales reports to the State as a condition of payment. In addition to inclusion of Reseller volume in the Contractor's sales reporting obligation to the State, at the request of an Authorized User, the Reseller shall provide the Authorized User with reports of the individual Authorized User's Contract activity with the Reseller.

**E. Applicability of Contract Terms**

Product ordered directly through Resellers shall be limited to Products previously approved for inclusion under this Contract and shall be subject to all terms and conditions of this Contract as a condition of Reseller participation.

**6.38 New Accounts**

Contractor may ask State Agencies and other Authorized Users to provide information in order to facilitate the opening of a customer account, including documentation of eligibility to use New York State Contracts, agency code, name, address, and contact person. State Agencies shall not be required to provide credit references.

**6.39 Drug and Alcohol Use Prohibited**

For reasons of safety and public policy, in any Contract resulting from this Solicitation, the Contractor's personnel shall not be impaired by alcohol or drugs of any kind in the performance of the Contract.

**6.40 Traffic Infractions**

Neither the State nor Authorized Users will be liable for any expense incurred by the Contractor's personnel for any parking fees or as a consequence of any traffic infraction or parking violation attributable to employees of the Contractor in performance of the Contract.