



Invitation for Bids

BID OPENING DATE: Tuesday, July 18, 2023 TIME: 1:30 P.M. EST INVITATION FOR BIDS NUMBER: 23315	TITLE: Group 01800 - Road Salt, Treated Salt, & Emergency Standby Road Salt (Statewide) Classification Codes: 12
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CONTRACT PERIOD: The later of (i) September 1, 2023, or (ii) the date of OSC approval through August 31, 2024

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: OGS.sm.SST_roadsalt@ogs.ny.gov

Brandy Alden Contract Management Specialist 2 Telephone No. (518) 408-1140 E-mail address: Brandy.Alden@ogs.ny.gov	Jose DeAndres Team Leader Telephone No. (518) 474-3024 E-mail address: Jose.DeAndres@ogs.ny.gov
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Bidder's Federal Tax Identification Number: <i>(Do Not Use Social Security Number)</i>	NYS Vendor Identification Number: <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: _____

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: _____

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

TABLE OF CONTENTS

SECTION 1: INTRODUCTION.....	6
1.1 Overview.....	6
1.2 Scope.....	6
1.3 Estimated Quantities.....	6
1.4 Key Events/Dates.....	6
1.5 NYS Contract Reporter.....	7
1.6 Bidder Questions.....	7
1.7 NYS Comptroller Approval.....	7
1.8 MWBE & SDVOB Interest in Partnering with Bidders.....	7
1.9 Summary of Policy and Prohibitions on Procurement Lobbying.....	8
1.10 Definitions.....	8
1.11 Appendices and Attachment.....	9
1.12 Conflict of Terms.....	9
SECTION 2: BIDDER QUALIFICATIONS.....	10
SECTION 3: SPECIFICATIONS.....	11
SECTION 4: BID SUBMISSION.....	11
4.1 Performance and Bid Bonds.....	11
4.2 NYS Vendor File Registration.....	11
4.3 Format of Bid Submission.....	11
4.4 Content.....	12
4.5 Bid Envelopes and Packages.....	14
4.6 Bid Delivery.....	14
4.7 Important Building Access Procedures.....	14
4.8 NYS Required Certifications.....	14
4.9 Data Sheets to Be Furnished with Bid.....	15
4.9.1 Material Safety Data Sheets (Potentially Toxic Substances).....	15
4.9.2 Bidder Certified Product Data Sheets.....	15
4.9.3 Independent Laboratory Analysis Report.....	15
4.10 Supplier/Manufacturer’s Certificate.....	15
4.11 Bid Deviations.....	16
4.12 Bid Opening Results.....	16
4.13 Bid Liability.....	16
4.14 Firm Offer.....	16
4.15 NYS Reserved Rights.....	16
4.16 Incorporation.....	17
SECTION 5: METHOD OF AWARD.....	18
5.1 Method of Award.....	18
5.2 Notification of Award.....	18
SECTION 6: TERMS AND CONDITIONS.....	19

6.1	Contract Term and Extensions	19
6.2	Short Term Extension	19
6.3	Price	19
6.3.1	Storage Fees	19
6.3.2	Price Escalation Based on Quantities Exceeding 120% & 130% of Filed Requirement	20
6.3.3	Fuel Price Adjustment	20
6.3.4	Additional Notes on Fuel Price Adjustment	21
6.3.5	Price Adjustment for Renewals	22
6.3.6	Price Reductions	22
6.4	Best Pricing Offer	22
6.5	Price Structure	22
6.6	Ordering	22
6.6.1	Purchasing Card Orders	22
6.7	Minimum Order	23
6.8	Minimum/Maximum Purchase Obligations	23
6.9	Invoicing and Payment	23
6.10	Delivery Terms	24
6.10.1	Delivery Schedule	24
6.10.2	Compliance with Delivery Schedule & Purchase Orders	24
6.10.3	Ordering Timeliness	24
6.10.4	Holidays/Weekends	24
6.10.5	Prevention of Contamination	24
6.10.6	Non-Complying Product – Price Deduction	25
6.10.7	Acceptance	25
6.10.8	Weight Tickets	25
6.10.9	Delivery Timetable	25
6.10.10	Delivery Rate Guarantees/Exceptions	26
6.10.11	Liquidated Damages	27
6.10.12	Buy Against	27
6.11	Emergency Standby Road Salt Provision - Use Guidelines	28
6.11.1	Lot I – Road Salt	28
6.11.2	Lot II and Lot III – Treated Salt	28
6.11.3	Emergency Standby Road Salt Provision – Ordering Process	29
6.11.4	Emergency Standby Road Salt Provision – Buy Against Process	29
6.12	On Ground/Delivered Inventory	30
6.13	Product Returns and Exchanges	30
6.14	Contract Administration	30
6.15	NYS Financial System (SFS)	31
6.16	Americans with Disabilities Act (ADA)	31
6.17	N.Y. State Finance Law § 139-I	31
6.18	Insurance	31

6.19	Report of Contract Usage.....	32
6.20	Contractor Requirements and Procedures for Business Participation Opportunities for NYS Certified Minority- and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women.....	32
6.21	Participation Opportunities For New York State Certified Service-Disabled Veteran Owned Businesses.....	37
6.22	Environmental Sustainability and NYS Executive Order Number 22	38
6.23	Consumer Products Containing Mercury	38
6.24	Diesel Emission Reduction Act	38
6.25	Overlapping Contract Products	38
6.26	Preferred Source Products.....	38
6.27	NYS Vendor Responsibility	39
6.28	NYS Tax Law Section 5-a.....	40
6.29	Non-State Agencies Participation in Centralized Contracts.....	40
6.30	Extension of Use	40
6.31	New Accounts.....	40
6.32	Centralized Contract Modifications	41
6.33	Drug and Alcohol Use Prohibited	41
6.34	Traffic Infractions	41
6.35	Contract Documents; Electronic Format	41
6.36	New York State Buy American Salt Act	42

SECTION 1: INTRODUCTION

1.1 Overview

This Solicitation is issued by the New York State (“NYS”) Office of General Services (“OGS”), Procurement Services for Road Salt, Treated Salt, and Emergency Standby Road Salt as specified herein for all Authorized Users eligible to purchase through this Solicitation.

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

The resultant Contract(s) are to provide Road Salt (Rock) in bulk, Treated Salt (Types 1 & 2) in bulk, and Emergency Standby Road Salt (Rock & Solar) in bulk, to various locations throughout the State.

State and eligible non-State agencies may participate.

Lot I	Road Salt (Rock),
Lot II	Treated Salt – Type 1
Lot III	Treated Salt – Type 2

1.3 Estimated Quantities

The quantities listed for Road Salt and Treated Salt are based on the requirements filed for each using entity. Refer to Attachment 1 – *Pricing* for estimated filed requirement quantities per county and salt type.

The Contractor must furnish all quantities actually ordered at or below Contract prices. The anticipated dollar value of the award for this Invitation for Bids, based on historical purchases under previous awards, and filed requirements, is approximately **\$240,000,000.00** annually.

The individual value of each resultant Contract is indeterminate and will depend on the number of Contracts issued and the competitiveness of the pricing offered. See also, Appendix B, Estimated/Specific Quantity Contracts and Participation in Centralized Contracts.

1.4 Key Events/Dates

Event	Date	Time
IFB Release	June 13, 2023 (tentative)	N/A
Closing Date for Bidder Questions	June 23, 2023	5:00 PM ET
OGS Procurement Services’ Responses to Bidder Questions	July 6, 2023 (tentative)	N/A
Bid Opening / Due date for Bids	July 18, 2023	1:30 PM ET
Contract Approval Date / Award Publish Date	The later of (i) September 1, 2023, or (ii) the date of OSC approval	

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 OGS.sm.SST_roadsalt@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. A Bidder is 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 NYS Contract Reporter (“NYSCR”). Your company 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

In accordance with Section 112 of the State Finance Law, a Contract resulting from this Solicitation shall not be valid, effective or binding upon the State until such Contract has been approved by the Office of the New York State Comptroller (“OSC”). Purchase orders or other procurement transactions issued under such Contract(s) may also be subject to OSC approval.

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 23315 MWBE or SDVOB INTEREST_COMPANY NAME*” to OGS.sm.SST_roadsalt@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 New York State Contract Reporter.

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; Dr. 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" is a unique ten-character identifier issued by the NYS Office of the State Comptroller (OSC) when the vendor is registered on the Vendor File System.

"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 a 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").

"SDVOB" shall refer to a NYS-certified Service-Disabled Veteran-Owned Business

1.11 Appendices and Attachment

Appendix A – *Standard Clauses for NYS Contracts* (June, 2023)

Appendix B – *General Specifications* (April 2016)

Appendix C – *Federal Funding Agency Mandatory 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 – *Certification Under Executive Order No. 16*

Attachment 10 – *Road & Treated Salt Specifications*

Attachment 11 – *Bidder Certified Product Data Sheet*

Attachment 12 – *Delivery Schedule*

Attachment 13 – *Supplier/Manufacturer's Certificate*

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;

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 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, production capacity, 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.

A Bidder shall meet the following qualifications:

1. A Bidder intending to participate in this Solicitation must guarantee that it has a source of supply from a Supplier/Manufacturer (if the Bidder does not own its own mine) and that the Supplier/Manufacturer has agreed to supply the Bidder with all quantities of Products required by the Bidder in fulfillment of its obligations under the resultant Contract. See Section 4.10 - *Supplier/Manufacturer's Certificate*.
2. Bidder shall supply Attachment 11 – *Bidder Certified Product Data Sheet* as well as Material Safety Data Sheets. See Section 4.9 - *Data Sheets to be Furnished with Bid*.
3. Upon request, all Bidders (excluding Contractors that have previously held an award under NYS OGS Group 01800 within the last two (2) years) 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 Bidder to perform jobs similar in scope to the size, nature and complexity of the bid.

The references shall include:

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

Failure by a Bidder to provide any of the above information or to meet any of the above qualifications in whole or in part may result in disqualification of Bidder from award.

SECTION 3: SPECIFICATIONS

For general and detailed specifications for Road Salt (Rock & Solar) and Treated Salt (Type 1 & Type 2), and Lot structuring, see Attachment 10 – *Road & Treated Salt Specifications*.

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 New York State ten-digit vendor identification number (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 Vendor ID on the first page of this Solicitation. Authorized resellers already registered should list the Vendor ID number along with the authorized reseller information. (The 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 a Vendor ID from OGS. Bidder must complete the OSC Substitute W-9 Form (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 a 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 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://osc.state.ny.us/vendors/>

4.3 Format of Bid Submission

A. 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*. Any Bid pricing or portions thereof submitted on USB flash drive that are incomplete or that cannot be opened/accessed may be rejected. 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:

1. E-mail or facsimile Bid submissions are not acceptable, and
2. Absent Price Pages (Attachment 1 – *Pricing*) are not acceptable.

- B. 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.
- C. 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.
- D. 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

	<u>Bid Document</u>	<u>Electronic (USB)</u>	<u>Original (Hard Copy)</u>
a.	Pages 1 and 2 of the Solicitation with original ink signature	X (PDF)	X
b.	Completed Attachment 1 - <i>Pricing</i>	X (PDF)	X
c.	Bid Solicitation Updates (if applicable), with original ink signature	X (PDF)	
d.	Completed Attachment 2 – <i>NYS Required Certifications</i> with original ink signature	X (PDF)	
e.	Completed Attachment 3 – <i>Encouraging Use of NYS Businesses</i>	X (PDF)	
f.	Proof of Compliance with Attachment 4 – <i>Insurance Requirements</i>	X (PDF)	
g.	Completed Attachment 5 – <i>Bidder Information Questionnaire</i>	X (Excel)	
h.	Completed Attachment 6 – <i>Bidder Submission Checklist</i>	X (Excel)	
i.	Attachment 7 – <i>Bidder Questions Form</i>	Not required to be submitted with the bid	
j.	Attachment 8 – <i>Report of Contract Usage</i>	Not required to be submitted with the bid	
k.	Completed Attachment 9 – <i>Certification Under Executive Order 16</i> with original ink signature	X (PDF)	
l.	Attachment 10 – <i>Road & Treated Salt Specifications</i>	Not required to be submitted with the bid	
m.	Completed Attachment 11 – <i>Bidder Certified Product Data Sheet</i> with original ink signature	X (PDF)	
n.	Attachment 12 – <i>Delivery Schedule</i>	Not required to be submitted with the bid	

(table is continued on the next page)

n.	Completed Attachment 13 – <i>Supplier/Manufacturer's Certificate</i> with original ink signature (if applicable)	X (PDF)	
o.	Completed Appendix C – <i>Federal Funding Agency Mandatory Terms and Conditions</i> with original ink signature, with Section 10 completed.	X (PDF)	
p	Completed <i>Material Safety Data Sheet(s)</i> for each toxic substance (see Section 4.9.1)	X (PDF)	
q	Completed <i>Independent Laboratory Analysis Report</i> indicating chemical makeup for Treated Salt (if applicable) (see Section 4.9.2)	X (PDF)	
r	Completed <i>Independent Laboratory Analysis Report</i> indicating Sieve Size and Moisture Content for Road Salt & Solar Salt (if applicable) (see Section 4.9.3)	X (PDF)	
s	Completed EEO 100; Equal Employment Opportunity Staffing Plan https://ogs.ny.gov/mwbe/forms	X (PDF)	
t	Completed MWBE 100, MWBE Utilization Plan https://ogs.ny.gov/mwbe/forms	X (PDF)	
u	Vendor Responsibility Questionnaire (completed and signed) or Certification of completion online	X (PDF)	
v	Completed ST 220CA, Contractor Certification, notarized with original ink signatures https://www.tax.ny.gov/forms/form_number_order_st_y.htm	X (PDF)	

All documents must be completed in accordance with the instructions for the individual document, which may include an original signature or an original notarized signature. At this time, OGS cannot accept an eSignature that has been generated by software.

Documents should be submitted as an electronic copy and in the format specified in the list above for each document (e.g., PDF, Excel), following the instructions provided in this section. Electronic copies of documents must be submitted on two (2) USB flash drives, with each USB flash drive containing a complete set of the submitted documents. When submitting electronic documents, include a printed copy of page 1 of the Solicitation with the Bid (see Section 4.5 - *Bid Envelopes and Packages*, below).

Electronic copies of documents provided in PDF format should be saved as an Adobe Acrobat PDF, AND THEN converted to allow for Optical Character Recognition (OCR) (see <https://www.adobe.com/acrobat/how-to/ocr-software-convert-pdf-to-text.html>).

Bidder is responsible for retaining the original documents with original signatures that have been scanned and submitted electronically until a determination of award is made. If an award is made to Bidder, the documents with original signatures shall be retained by the Bidder for a period of six (6) years after the term of the contract has ended. Bidder shall submit such documents with original signatures to OGS upon request.

In the case of discrepancies between paper copies (if applicable) and USB flash drive submissions of the documents submitted by the Bidder, the electronic USB flash drive copy shall take precedence over the paper copy.

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 #23315)
3. Bid Opening Date and Time
4. The number of boxes or packages (e.g., 1 of 2; 2 of 2)

All Bids should also include a PRINTED copy of page 1 of the Solicitation, completed with the Bidder's information. This printed copy of page 1 should be placed in the envelope with the USB flash drives.

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 1:30 p.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
Attn: Bid Enclosed – IFB 23315

Bidder assumes all risks for timely, properly submitted deliveries. The time of Bid receipt is determined by OGS according to the timeclock 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. Refer to "Important Building Access Procedures" clause.

4.7 Important Building Access Procedures

To access the Corning Tower, all visitors must check in by presenting photo identification at the Corning Tower 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 or Customer Services (518) 474-6717 at least 24 hours prior to the visit. If no answer, leave a detailed phone message including the following information: reason for visit and/or delivering a bid, solicitation number, date and estimated time of delivery or visit, first and last name of visitor, and visitor's cell phone number. Visitor may email customer.services@ogs.ny.gov providing the same information.

Visitors who are not pre-registered will be directed to a designated phone at the Corning Tower Information Desk, where they are to call the Procurement Services Receptionist (518) 474-6262 or Customer Services (518) 474-6717 for access. The visitor will be registered at that time. Bids are not allowed to be left at the Corning Tower Information Desk. Please note that 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.

4.9 Data Sheets to Be Furnished with Bid

Bidder shall submit with its Bid detailed specifications, Product literature, and all necessary data on the commodity(ies) to be furnished. If the commodity(ies) offered differs from the provisions listed, such differences must be explained in detail. Failure to submit any of the above data 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.

4.9.1 Material Safety Data Sheets (Potentially Toxic Substances)

Each Contractor furnishing a toxic substance (as defined by Section 875 of the State Labor Law) to an ordering agency shall provide such agency with not less than two copies of a Material Safety Data Sheet. This sheet shall include, of each such substance, the information outlined in Section 876 of the State Labor Law.

4.9.2 Bidder Certified Product Data Sheets

The Bidder shall submit with Bid completed "Bidder Certified Product Data Sheet" (Attachment 11 – *Bidder Certified Product Data Sheet*) for EACH PRODUCT BID FOR EACH LOT.

4.9.3 Independent Laboratory Analysis Report

An independent certified analysis conducted **within the past 3 years** of the bid opening date for this Invitation for Bids, showing compliance with specification requirements outlined in Attachment 10 – *Road & Treated Salt Specifications*, Sections 1, 2, and/or 3 of this Solicitation must be submitted with the Bid.

The Bidder shall submit 3rd party lab reports indicating:

- Sieve size and moisture content for **Rock Salt & Solar Salt**; and/or
- Chemical makeup for **Treated Salt**.

These Independent Laboratory Analysis Reports are required only if Bidder has not previously held an award under NYS OGS Group 01800 within the last two (2) years.

Deviation from any of the specifications may result in the rejection of the entire delivery load or loads (if from the same source) at the discretion of agency personnel. All costs associated with rejected deliveries shall be borne by the Contractor.

The supplier of any product delivered and/or applied that is found to be contaminated with non-specified products and/or is cause for environmental concerns which may necessitate yard, storage facility, or roadside cleanup measures shall be responsible for all cleanup expenses, without limitation.

4.10 Supplier/Manufacturer's Certificate

A Bidder offering road salt from a salt mine it does not own and operate must furnish written authority with its Bid from the operator of the mine being used to sell road salt under the resulting Contract from this solicitation.

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 13 – *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 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 NYS Contract Reporter;

- 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;
- 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.

SECTION 5: METHOD OF AWARD

5.1 Method of Award

Award shall be made to the lowest responsive and responsible bidder per item within each Lot and within each County on an F.O.B. Destination Basis, including specified delivery requirements, provided however, that in accordance with the New York State Buy American Salt Act, award shall be made to responsible and reliable bidders offering to supply rock salt or sodium chloride that is mined or hand harvested in the United States, and which offer (per item within each Lot and County) is within ten percent (10%) of the lowest price, rather than to the lowest responsive and reliable bidder.

If more than one offer is received within ten percent of the lowest price (per item within each Lot and County) from responsible and reliable bidders offering to supply rock salt or sodium chloride that is mined or hand harvested in the United States, award will be made to the lowest price among such offers.

The State reserves the right to limit the total tonnage awarded to a Contractor if, in the opinion of the Commissioner of General Services, the Contractor may be unable to fulfill its contractual obligations due to the magnitude of its commitment to the State and others. In the event no complying bids are received for one or more items; non-complying bids may be considered.

Bid price for Storage Fees is not to exceed \$3.60/ton. If the Storage Fees bid price submitted exceeds the cap of \$3.60/ton, the bid price will be evaluated and awarded as \$3.60/ton for unmet minimums purchased from September 1, 2024 through December 31, 2024. For salt purchased relating to unmet minimums on or after January 1, 2025 bid price for Storage Fees is not to exceed \$8.00 per ton/per month.

OGS reserves the right to reject an obviously unbalanced Bid or to make "NO AWARD" on individual listings or sub-items if individual Bid prices are deemed to be unbalanced or excessive or if an error in the solicitation becomes evident. In such case, ranking and evaluation of bids may be made on remaining items. Award would be made on the remaining items. The determination of an unbalanced Bid shall be at the sole discretion of OGS. Options contained in this paragraph shall also be at the sole discretion of OGS.

5.2 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.

SECTION 6: TERMS AND CONDITIONS

6.1 Contract Term and Extensions

- A. Base Term: The Contract shall be in effect for a term of up to one (1) year. The Contract term shall commence after all necessary approvals and shall become effective September 1, 2023, or upon the date of OSC approval of the final, executed Contract documents, whichever is later. The Contract term shall end August 31, 2024.
- B. Extensions: At the State's option, if mutually agreed between OGS and the Contractor, and subject to the approval of OSC, the Contract may be extended under the same terms and conditions for up to two (2) additional one (1) year extensions. Whether the optional extensions are exercised is at the sole discretion of the State. 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 6 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 6-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 and duties and be net per ton, FOB destination designated on purchase order, including unloading of the bulk salt. Contract prices shall be firm except for price revisions permitted in accordance with the following clauses:

- Price Escalation Based on Exceeding 120% of Filed Requirement
- Price Escalation Based on Exceeding 130% of Filed Requirements
- Fuel Price Adjustment
- Price Adjustment for Renewals

Furthermore, the stated prices may be adjusted periodically based on various provisions.

6.3.1 Storage Fees

Submission of pricing for Storage Fees shall be collected on Attachment 1 - *Pricing*.

Price per ton is not to exceed \$3.60/ton to store salt on behalf of the Authorized User from September 1, 2024 until December 31, 2024. Salt stored from January 1, 2025 and beyond will be priced per ton, per month not to exceed \$8.00/ton.

6.3.2 Price Escalation Based on Quantities Exceeding 120% & 130% of Filed Requirement

A price escalation will be permitted when delivered quantities exceed 120%, and again at 130% of an Authorized User's filed requirement.

Contractors shall notify Authorized Users of the applicable price escalation amount at the time an order is placed (if an escalation in price for future purchases is to be applied).

A unit price increase of 10% will be allowed once quantities delivered are over 120% of an Authorized User's filed requirement. Once deliveries exceed 130% of an Authorized User's filed requirement the price increase will change to 15%.

Once the Contractor notifies the Authorized User that a price escalation is applicable, Authorized Users are allowed to solicit prices from other suppliers. If a lower price is secured, the awarded Contractor for the specific location/salt type must be given an opportunity to match or better the price offered by the other supplier offering the lower price. If the awarded Contractor will not or cannot match or better the lower offered price, Authorized Users may meet their needs from the supplier offering the lower price.

Authorized Users with multiple delivery sites (e.g. NYSDOT, NYS Thruway and County Highways) shall have their minimum/maximum delivery quantities determined based on the sum of all their sites serviced by awarded Contractor.

Contractors will continue to deliver to all Authorized Users including up to 130% of the Authorized User's filed requirement. Failure to deliver may result in a "Buy Against" or a delivery deduction to the Contractor.

6.3.3 Fuel Price Adjustment

A fuel price adjustment may be made to Contract pricing in accordance with the following procedure:

- On a monthly basis an amount may be added or deducted from Contract pricing based on calculations made referencing prices posted in the "EIA Retail On-Highway Diesel Prices".
- The New England PADD 1A shall be the designated posting for the adjustments. If this source becomes unavailable, unworkable, unsuitable, or not reflective of the market conditions, then another source may be selected by the Commissioner of General Services in his/her sole discretion.
- Fuel Price adjustments will be applicable for deliveries of road salt & treated salt made during the Contract period. The fuel price adjustment shall be applied for the **date of delivery**.
Ex.: If a purchase order for salt is received on January 30, and the salt is delivered on February 2, the fuel price adjustment used will be that for the month of February.
- The base rate used for calculating adjustments shall be the rate shown in the referenced EIA on the date of the Bid Opening indicated on the page 1 of this Invitation for Bids and adjustments will be permitted monthly.
- The monthly average will be arrived at by using the Monday prices for a given month as displayed in the EIA Retail On-Highway Diesel Prices and determining an average for that month. The previous month's prices shall be used to determine the monthly average (i.e. – August's prices will be used to determine September's adjustment). All prices will be rounded to two decimal places.

- Fuel Price Adjustment calculations will be posted to the OGS website monthly:
<https://online.ogs.ny.gov/purchase/spg/pdfdocs/SaltControlAgentsPriceAdjustments.htm>.

EXAMPLE FUEL PRICE ADJUSTMENT INCREASE:

Published rate on date of bid opening	\$4.07
Monthly Average Price	\$4.17

Monthly Average Price – Published rate on date of bid opening = Fuel Price Adjustment
\$4.17 - \$4.07 = \$0.10 = Additional amount allowed to be added to price per ton.

EXAMPLE FUEL PRICE ADJUSTMENT DECREASE:

Published rate on date of bid opening	\$4.07
Monthly Average Price	\$3.97

Monthly Average Price – Published rate on date of bid opening = Fuel Price Adjustment
\$3.97 - \$4.07 = - \$0.10 = Amount allowed to be deducted from price per ton.

- Deliveries made to meet minimum filed requirement obligations after contract expiration (August 31, 2023), where no extension has been granted, will apply the Fuel Price adjustment average for the month in which the product was delivered which will be calculated using the base price established August 1, 2022.

6.3.4 Additional Notes on Fuel Price Adjustment

Should postings become unavailable, not reflective of market conditions, or differ from current description and/or format, a posting determined by the Commissioner of General Services in his/her sole discretion to be most reflective of market conditions will be used. Corrections to posted prices will be considered only when caused by a typographical or clerical error on the part of said posting.

The following shall apply to all additional price amounts under any Contract awarded:

- Price adjustments are limited to changes in pre-selected posting as noted above. Increases in Contract costs or prices to compensate for other increases in the cost of doing business, regardless of the cause or nature of such costs of the Contractor, will not be allowed during the Contract period, except as indicated under the fuel price adjustment and price escalation clause herein.
- Should the price structure utilized by the parties become unworkable for the State, detrimental or injurious to the State, or result in prices which are not truly reflective of current market conditions and the price is deemed unreasonable or excessive by the Commissioner of General Services, and no adjustment in price is mutually agreeable, the Commissioner of General Services reserves the sole right upon 10 days written notice mailed to the Contractor to terminate any Contract resulting from this bid opening. If the Contractor is unable or unwilling to meet contractual requirements in whole or in part, it shall immediately notify the State of that fact in order that the State may take appropriate action. Such notification shall be in writing and shall be directed to the OGS Procurement Services. Such notification shall not relieve the Contractor of its responsibilities under the Contract.

In the event of an extension, the base rate for calculating adjustments will be the rate shown in the referenced EIA on the date of the next bid year's bid opening and for subsequent years additional extensions would follow this format. If there is no bid opening date for the next year, the base rate for calculating adjustments will be the rate shown in the referenced EIA one year after the last bid opening date. If the date is not a business date when the posting occurs, the next business day will be the date used for the adjustment.

6.3.5 Price Adjustment for Renewals

Price Adjustments for extensions or renewals shall be negotiated and mutually agreed upon by OGS and each Contractor. OGS's review may include appropriate indices as determined by OGS, market conditions reflecting supply and demand, and other economic factors deemed appropriate by OGS. Each Contractor's review will be independent.

6.3.6 Price Reductions

Contractors shall be permitted to reduce their pricing any time during the Contract term.

6.4 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.

6.5 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.

6.6 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).

6.6.1 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.

6.7 Minimum Order

The minimum order for this Contract is 22 tons.

6.8 Minimum/Maximum Purchase Obligations

Authorized Users are obligated to take a **minimum of 50%** of their filed requirements during the Contract period:

Contractors are obligated to deliver up to 130% of the filed requirement for Road Salt and Treated Salt.

Authorized Users with multiple delivery sites (e.g., NYSDOT, County Highways and NYS Thruway) shall have their minimum/maximum delivery quantities determined based on the sum of all their sites serviced by a Contractor per lot.

When the Authorized User is not able to take the minimum filed requirement amount, the awarded Contractor for the specific location will store salt for the Authorized User until December 31, 2024 for a one time/per ton storage fee not to exceed \$3.60/ton. If storage is necessary for an Authorized User from January 1, 2025 and beyond, the awarded Contractor may offer storage at a per month per ton rate.

6.9 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 including if the product was mined/hand harvested in the United States or not mined/hand harvested in the United States)
- 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>.

6.10 Delivery Terms

Road salt and treated salt shall be shipped bulk delivery as outlined below.

6.10.1 Delivery Schedule

The *Delivery Schedule* for this Solicitation is included as an Attachment. It is provided as a guide to indicate proposed delivery points and estimated annual requirements. Contractors shall be obligated to add to the delivery schedule any State Agency that submits filed requirement(s) on or before December 31 of the Contract term. Any State Agency that submits filed requirement(s) after December 31 shall be eligible to be added to the delivery schedule and receive deliveries at the Contractor's discretion only.

Any political subdivision or other non-state entity which has not filed a requirement with OGS Procurement Services as of the date of the bid opening shall be eligible to be added to the delivery schedule and receive deliveries at the Contractor's discretion only.

Contractors will be advised regarding political subdivisions or other non-State entities which have filed on a timely basis but do not appear on the delivery schedule.

6.10.2 Compliance with Delivery Schedule & Purchase Orders

Delivery shall be made in accordance with instructions on the Purchase Order from each Authorized User and delivery instructions/conditions as shown in the referenced *Delivery Schedule*. Contractors should carefully review the delivery schedule and make note of these requirements. If there is a discrepancy between the purchase order and what is listed in the Contract and/or within the delivery schedule, it is the Contractor's obligation to seek clarification from the ordering Authorized User and, if applicable, from OGS Procurement Services.

If no representative of the Authorized User is available at the time of delivery, the Contractor shall make a reasonable effort to notify the Authorized User of the delivery, either by phone or by email.

6.10.3 Ordering Timeliness

Orders must be placed before 2 p.m. Any orders placed after 2 p.m. shall be deemed as having been placed on the next business day.

6.10.4 Holidays/Weekends

If the scheduled delivery is to occur on a holiday or weekend, the next weekday will be the delivery date, unless the Contractor and the ordering Authorized User mutually agree differently.

6.10.5 Prevention of Contamination

Delivery trucks shall be inspected (and cleaned if necessary) prior to loading to prevent contamination of salt loads by residual materials found in the truck bodies. Any loads found to be contaminated may be subject to rejection with all related cleanup and/or replacement costs to be borne by the supplier.

All shipments of salt shall be totally covered with a waterproof, non-porous tarpaulin, or similar sheeting material. Torn, ripped or mesh coverings may be cause for rejection of shipment. Also, evidence of free-flowing water/brine in particular shipments may be cause for rejection.

Upon inspection of delivered salt, the material shall be uniform in appearance, free flowing and free from visual evidence of foreign matter including but not limited to dirt, stone, chips, trash or any other material that could reasonably be expected to interfere with the use, handling or storage of the salt. Salt shall be received in a free-flowing and usable condition.

(continued on next page)

The right is reserved to consider truckloads of salt delivered by the Contractor to any one Authorized User on a single day to be a single delivery. Price deductions imposed because of contamination may be imposed on the total day's delivery.

If the Authorized User accepts contaminated salt (salt delivered in a lumpy condition which requires reprocessing in order to make it usable) shall be cause for rejection of the entire delivery, with a replacement delivery to be made at no additional charge to the Authorized User.

If, because of emergency conditions, it is necessary to accept and reprocess the Salt for use, all costs will be charged to the Contractor. For operational reasons, a 10% price deduction may be placed on the Contractor by the Authorized User after consultation with the Contractor and OGS Procurement Services.

Agencies will submit to OGS supporting documentation for price deduction in regard to contamination. OGS Procurement Services will review and will have final approval as to price deduction applied.

6.10.6 Non-Complying Product – Price Deduction

A non-complying product price deduction is not to be assessed unless the proper analysis and test procedures are followed. If the Contractor consistently delivers salt found to be outside the specification requirements for moisture content, or consistently not conforming to the gradation requirements, the Contract shall be subject to cancellation either in whole or in parts.

The right is reserved to consider truckloads of salt delivered by the Contractor to any one Authorized User on a single day to be a single delivery. Price deductions imposed because of deviation from specifications may be imposed on the total day's delivery.

6.10.7 Acceptance

The salt may be rejected if it fails to conform to any of the requirements of this Solicitation or the specifications in Attachment – *Road & Treated Salt Specifications*.

6.10.8 Weight Tickets

All shipments of bulk salt shall be accompanied by a weight ticket of a licensed weigh master indicating the producer, net weight of the delivery, and in the case of bulk delivery, the stockpile source. Tickets should be completely filled out with hauler name (printed and signed) and AU rep name printed and signed (if AU rep is present at the time of delivery).

The certification must bear the weigh master's signature; weights shall be recorded from a scale equipped with a weight printing device. **Handwritten weights are not acceptable** without prior approval of OGS.

In the event that handwritten tickets must be used, the Contractor must contact OGS Procurement Services to obtain approval prior to delivery of the order.

6.10.9 Delivery Timetable

Completed delivery, at the latest, is required as follows:

- Contractor is required to deliver orders of 600 tons or less* within three (3) Business Days of Authorized User placing an order.
- Contractor will be required to deliver a minimum of 200 tons per day after the initial 600-ton delivery.
- Multiple orders placed for the same delivery site that overlap will be viewed as a single order, still subject to the overall 200 tons per day minimum delivery.

Authorized Users are advised not to place orders that exceed their maximum storage capacity.

See below, *Delivery Timetable Example* for more information.

Single Order Placed on	First 600 Tons or Less* Delivered by	601 - 800 Tons Delivered by	801 -1000 Tons Delivered by	Over 1000 Tons Delivered by
Monday	Thursday	Friday	Monday	200 Tons/Day/Location
Tuesday	Friday	Monday	Tuesday	200 Tons/Day/Location
Wednesday	Monday	Tuesday	Wednesday	200 Tons/Day/Location
Thursday	Tuesday	Wednesday	Thursday	200 Tons/Day/Location
Friday	Wednesday	Thursday	Friday	200 Tons/Day/Location

*if full amount of order is less than 600 tons

Delivery Timetable Example

An order of 1,400 tons placed on Monday shall be delivered as follows (or sooner):

Order Placed on	Thursday Delivery	Friday Delivery	Monday Delivery	Tuesday Delivery	Wednesday Delivery
Monday	600 tons	200 tons	200 tons	200 tons	200 tons

Note: Authorized Users are advised that their supply should be replenished on an ongoing basis, as it is depleted. It is not advised to allow the supply of product on-hand to reach a level that is dangerously low. This can cause undue stress to the delivery network during high levels of demand, which can be compounded by inclement weather conditions that adversely impact transit times for deliveries.

6.10.10 Delivery Rate Guarantees/Exceptions

From September 1 through the following May 31 of each Contract term, Contractors shall be required to make deliveries within the timetables set forth in Section 6.10.9, *Delivery Timetable*. However, from June 1 through August 31 of each Contract term, delivery shall be at the discretion of the Contractor.

Contractor shall notify the Authorized User and OGS Procurement Services promptly regarding anticipated performance issues such as low supply, late delivery, lack of Product, and insufficient hauling capability. Failure by the Contractor to do so may result in liquidated damages and/or a buy against in accordance with Section 6.10.11 - *Liquidated Damages* and Section 6.10.12 - *Buy Against*.

Although Contractors are expected to make every effort to meet these delivery timeframes, some exceptions may be made for extreme road and/or weather conditions (e.g. roadways that are closed, obstructed, or impassable due to winter weather conditions). Allowances for exceptions must be approved by the Office of General Services, Procurement Services, whose decision shall be final. Delivery will be allowed during the weekend and on State holidays only if the Contractor and the ordering Authorized User mutually agree. No additional remuneration will be made for a Saturday, Sunday, or holiday delivery.

6.10.11 Liquidated Damages

During the Contract period, each September through the following May 31, deliveries that do not meet the daily delivery tonnage requirements and/or the established order completions period specified, shall be considered cause for interruption of the proper implementation of the State's winter roadway safety. If it is determined that the interruption is caused by non-performance or negligence on the part of the Contractor, OGS Procurement Services and the Contractor presume that in the event of any such delay, the amount of damage that is sustained from a delay in daily delivery tonnage requirements and/or the established order completions period specified, is the greater of either:

1. \$100.00 per Business Day per Purchase Order or individual orders against blanket Purchase Orders, as applicable; or
2. 1% of the value of the Purchase Order or individual orders against blanket Purchase Orders, as applicable, for each Business Day that the breach is not cured by the Contractor.

OGS Procurement Services and the Contractor agree that in the event of any such delay the awarded Contractor shall pay such amount as liquidated damages.

During times when an Authorized User must work with the Contractor to prioritize/coordinate deliveries due to delays, the Contractor is not absolved from meeting delivery timetable requirements at other locations. During times of extreme weather activity that impact deliveries system-wide, OGS may consider waiving liquidated damages.

The following options may be used by Authorized Users for deducting amounts due to the Contractor because of liquidated damages:

1. Authorized User may deduct such amount from any money payable to the Contractor, or
2. Authorized User may bill the Contractor separately.

Costs incurred include, but are not limited to the following:

- Increased personnel costs due to demurrage;
- Increased costs incurred for treatment of salt on hand to extend usage;
- Costs for clean-up after required application of alternative snow and ice control materials (i.e. salt mixed with sand).

Liquidated damages may be applied to the Contractor by the Authorized User only after consultation with the Contractor and OGS Procurement Services. A request for the application of liquidated damages must be made to OGS within thirty (30) days of the event. Damages must be memorialized by supporting documentation that must be provided to OGS Procurement Services for review and approval.

6.10.12 Buy Against

Contractors must supply Product in accordance with the terms of the Contract and instructions on Purchase Orders. In the event of the Contractor's failure to deliver in accordance with Contract requirements, purchase of a specific quantity (pre-determined by OGS), utilizing the Emergency Standby Provision or the open market at the Contractor's expense may be authorized by OGS. Such authorized purchases will result in chargeback of the cost above the Contract price to the Contractor who fails to comply with delivery terms.

The Authorized User must make OGS Procurement Services aware of the non-delivery and allow OGS Procurement Services to ascertain if immediate delivery can be made by the Contractor prior to obtaining authorization from OGS Procurement Services to make an Emergency Standby purchase or a purchase on the open market.

If open market Treated Salt is not readily available, the Authorized User at their discretion may purchase Road Salt, in lieu of Treated Salt, for the undelivered quantity utilizing the Emergency Standby Road Salt Provision and if that option is not available, from the open market.

Any price difference above the Contract price of Treated Salt (Lot II and/or Lot III) will be deducted from future payments or billed to the Treated Salt Contractor. The Contractor of the Road Salt in this case may not be the non-performing Contractor of the Treated Salt (Lot II and/or Lot III). The Authorized User must obtain authorization to use this option also from OGS Procurement Services.

6.11 Emergency Standby Road Salt Provision - Use Guidelines

It is the intention of the Emergency Standby Road Salt Provision to be utilized only when emergency purchases of Road Salt are determined to be necessary (e.g., to be used for an impending storm when reserves are insufficient, and/or if the primary Contractor is unable to make a delivery when needed by the Authorized User).

Emergency Standby Road Salt will be able to be provided by any Contractor that holds an active award with NYS OGS Procurement Services under any Group 01800 Road Salt, Treated Salt, & Emergency Standby Road Salt contract.

These Emergency Standby Road Salt purchases may be made only after:

- A. The Contractor has failed to perform, or an Authorized User has a need to purchase due to an extenuating circumstance; and**
- B. Authorization for the purchase has been granted by OGS Procurement Services**

6.11.1 Lot I – Road Salt

In the event that a Contractor has failed to perform, State agencies and municipalities who filed requirements for the current Road Salt Contracts under Group 01800 – Lot I, may make purchases using the Emergency Standby Road Salt Provision.

If the current awarded Contractor for Road Salt is unable to supply needed Product, the Authorized User may “charge back” the difference in price to the awarded Contractor under the applicable Group 01800 – Lot I. For more information see section “Emergency Standby Road Salt Provision – Buy Against” below.

In the event that an Authorized User has been impacted by extenuating circumstances, approval to purchase using the Emergency Standby Road Salt Provision may be granted by OGS Procurement Services. This action will not result in a charge back to the awarded Contractor and is not dependent on the Authorized User having filed requirements for the current Road Salt Contracts under Lot I.

6.11.2 Lot II and Lot III – Treated Salt

OGS Procurement Services may, on a case-by-case basis, approve emergency purchases to be made by State agencies and municipalities (i.e. Authorized Users) who filed requirements under Group 01800 – Lots II and III (Treated Salt – Type 1 and Type 2)

In these cases, Road Salt would be provided in lieu of Treated Salt. State agencies and municipalities may charge back the difference in price to their original Treated Salt Contractor under Group 01800, as applicable. For more information see section “Emergency Standby Road Salt Provision – Buy Against Process” below.

The Contractor providing Emergency Standby Road Salt in lieu of Treated Salt shall not be the non-performing supplier of the Treated Salt (Lot II and Lot III).

6.11.3 Emergency Standby Road Salt Provision – Ordering Process

After receiving OGS Procurement Services approval, Authorized Users should contact any Contractors awarded a NYS OGS Procurement Services contract under Group 01800 contracts to provide Road Salt.

The Authorized User may request a quote from all awarded Contractors and use the results to place a Purchase Order. The quote should specifically address delivery time and ability to deliver which may be a determining factor in the choice of Contractor.

6.11.4 Emergency Standby Road Salt Provision – Buy Against Process

In the event that the awarded Contractor has failed to perform, the difference between the current awarded price for Road Salt (Lot I) and the amount paid for the provision of salt under the Emergency Standby Road Salt Provision may either be deducted or “charged back” by the Authorized User in one of the following ways:

a). When an invoice is due:

Authorized User may deduct the additional increased amount from the amount due to the Contractor in that invoice under the applicable current Lot I Award

b). When an invoice is not due:

The awarded Contractor will issue a credit or refund to the Authorized User for the difference in price between the amount owed under Lot I Award and the amount due to the Contractor

In either case, OGS Procurement Services will have already given authorization and receive a copy of the final invoice for the delivery. Authorized Users should document in detail the following:

- The date Purchase Orders were placed with their current Contractor,
- The quantity(ies) ordered,
- The date(s) and quantity(ies) received,
- Current Inventory, and
- All correspondence with current Contractor relative to late delivery(ies).

This information should be emailed to OGS Procurement Services at:

OGS.sm.SST_roadsalt@ogs.ny.gov

Upon receipt, the information will be reviewed, and the Authorized User will be contacted by OGS. If permission is granted for a purchase, Contractor and Authorized User will be contacted via e-mail. The Authorized User must attach the e-mail granting permission and all documentation previously submitted to OGS (as referenced in the above bullets) to their Purchase Order when processing for payment.

Tonnage purchased as a result of the application of the Emergency Standby Road Salt Provision will be deducted from the Authorized Users minimum filed requirement thereby reducing the final tonnage amount required to meet the 50% minimum purchase requirement.

If at any time during the Contract period, extenuating circumstances arise, and it is determined by the Office of General Services that the Contractor does not have adequate inventory, award may be made at documentation previously submitted to OGS (as referenced in the above bullets) to their Purchase Order when processing for payment.

6.12 On Ground/Delivered Inventory

Contractor shall have the following on-ground/delivered inventory reserved solely for Office of General Services Authorized Users as follows:

- October 1, 2023 - 35% of filed requirement for awarded counties
- November 1, 2023 - 50% of filed requirement for awarded counties

After November 1, 2023, the Contractor is obligated to maintain inventories adequate to provide deliveries as requested in the time frames and quantities requested. Any failure by the Contractor to deliver pursuant to Contract terms may result in a “buy against” to that Contractor in accordance Section 6.10.12 - *Buy Against*.

Upon request, Contractor shall be required to provide OGS Procurement Services with biweekly status updates of inventory on hand throughout the winter season that is dedicated to Authorized Users under the Contract. This shall include detailed information regarding tonnage currently in inventory at stockpile locations which is dedicated to Authorized Users of the Contract, and anticipated production or delivery of additional tonnage necessary to meet contractual requirements.

6.13 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.

6.14 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.

6.15 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 supports requisition-to-payment processing and financial management functions.

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/>.

6.16 Americans with Disabilities Act (ADA)

The federal ADA bars employment discrimination and requires all levels of government to provide necessary and reasonable accommodations to qualified workers with disabilities. Bidder is required to identify and offer any Products it manufactures or adapts that may be used or adapted for use by persons with visual, hearing, or any other physical disabilities. Although it is not mandatory for Bidder to have these Products in order to receive an award, it is necessary to identify any such Products offered that fall into the above category.

6.17 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.

6.18 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*.

6.19 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, **no later than 10 days after the first day of each month.** If the Contract period begins or ends in a fractional portion of a reporting period, only the actual Contract sales for this fractional period should be included in the monthly report.

Contractors shall specify if any authorized resellers, dealers, or distributors are NYS Certified Minority- and/or Women-Owned Business Enterprises (MWBES), 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.

6.20 Contractor Requirements and Procedures for Business Participation Opportunities for NYS 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, liquidated damages pursuant to clause IX of this section, and/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. 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. NYS Contract System Workforce Utilization Reporting Module (Commodities & Services)
- The Contractor shall complete, and shall require each of its subcontractors to complete a Workforce Audit on a quarterly basis throughout the term of this Contract, by the 10th day of April, July, October, and January to report the actual workforce utilized during the previous quarter in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. Contractor shall coordinate with its subcontractors to ensure that all workers associated with this Contract are properly counted and reported. To prepare the report, Contractor and its subcontractors shall use the NYS Contract System Workforce Audit Module found at the following website:
<https://ny.newnycontracts.com>
- The Workforce Audits must be completed electronically in the NYS Contract System Workforce Audit Module. Separate audits shall be completed by Contractor and all subcontractors, and the Contractor is responsible for ensuring timely submission of the Workforce Audit by their subcontractors. 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 complete the Workforce Audit 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 complete the Workforce Audit 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, 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 conviction and prior arrest.

IV. Contract Goals

- A. OGS hereby establishes an overall goal of 30% for MWBE participation, 15% for Minority-Owned Business Enterprises (“MBE”) participation and 15% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs) during the term of this Contract in the following counties: **Albany, Allegany, Bronx, Cattaraugus, Cayuga, Chautauqua, Clinton, Columbia, Cortland, Dutchess, Erie, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Kings, Lewis, Livingston, Madison, Monroe, Montgomery, Nassau, New York, Niagara, Oneida, Onondaga, Ontario, Orange, Orleans, Oswego, Putnam, Queens, Rensselaer, Richmond, Rockland, Saratoga, Schenectady, Schoharie, Seneca, St. Lawrence, Suffolk, Sullivan, Ulster, Warren, Washington, Wayne, Westchester, Wyoming, Yates.**

The total Contract goal can be obtained by utilizing any combination of MBE and /or WBE participation for subcontracting and supplies acquired under the Contract.

- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract goals established in clause IV-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address: <https://ny.newnycontracts.com/>. The MWBE Regulations are located at 5 NYCRR § 140 – 145. Questions regarding compliance with MWBE participation goals should be directed to the Designated Contacts within the OGS Office of Business Diversity. 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.
- C. Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract (see clause VII below).

V. MWBE Utilization Plan

- A. In accordance with 5 NYCRR § 142.4, Bidders are required to submit a completed Utilization Plan on Form MWBE 100 with their bid.
- B. The Utilization Plan shall list the MWBEs the Bidder intends to use to perform the Contract, a description of the Contract scope of work the Bidder intends the MWBE to perform to meet the goals on the Contract, the estimated or, if known, actual dollar amounts to be paid to an MWBE. By signing the Utilization Plan, the Bidder acknowledges that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by New York State Certified MWBEs after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OGS.
- C. By entering into the Contract, Bidder/Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. When an MWBE is serving as a broker on the Contract, only 25 percent of all sums paid to a broker shall be deemed to represent the commercially useful function performed by the MWBE.
- D. OGS will review the submitted MWBE Utilization Plan and advise the Bidder of OGS acceptance or issue a notice of deficiency within 30 days of receipt.
- E. If a notice of deficiency is issued; Bidder agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the Bidder and direct the Bidder to submit, within five (5) business days of notification by OGS, a request for a partial or total waiver of MWBE participation goals on Form BDC 333.1. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

- F. OGS may disqualify a Bidder's bid/proposal as being non-responsive under the following circumstances:
- (a) If a Bidder fails to submit an MWBE Utilization Plan;
 - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
 - (c) If a Bidder fails to submit a request for waiver; or
 - (d) If OGS determines that the Bidder has failed to document good faith efforts.
- G. If awarded a Contract, Contractor certifies that it will follow the submitted MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in clause IV-A of this Section.
- H. Bidder/Contractor further agrees that a failure to submit and/or use such completed MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OGS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.
- VI. Request for Waiver
- A. Prior to submission of a request for a partial or total waiver, Bidder shall contact the Designated Contacts listed on page 1 of this document for guidance.
- B. In accordance with 5 NYCRR § 142.7, a Bidder/Contractor who is able to document good faith efforts to meet the goal requirements, as set forth in clause VII below, may submit a request for a partial or total waiver on Form BDC 333.1, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its MWBE Utilization Plan. If a request for waiver is submitted with the MWBE Utilization Plan and is not accepted by OGS at that time, the provisions of clauses V(C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) business days of receipt.
- C. Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If OGS, upon review of the MWBE Utilization Plan and Monthly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE contract goals.
- VII. Required Good Faith Efforts
- In accordance with 5 NYCRR § 142.8, Contractors must document their good faith efforts toward utilizing MWBEs on the Contract. Evidence of required 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.

VIII. Monthly MWBE Contractor Compliance Report

- A. In accordance with 5 NYCRR § 142.10, Contractor is required to report Monthly MWBE Contractor Compliance to OGS during the term of the Contract for the preceding month's activity, documenting progress made towards achievement of the Contract MWBE goals. OGS requests that all Contractors use the New York State Contract System ("NYSCS") to report subcontractor and supplier payments made by Contractor to MWBEs performing work under the Contract. The NYSCS may be accessed at <https://ny.newnycontracts.com/>. This is a New York State-based system that all State agencies and authorities will be implementing to ensure uniform contract compliance reporting throughout New York State.
- B. When a Contractor receives a payment from a State agency, it is the Contractor's responsibility to pay its subcontractors and suppliers in a timely manner. On or after the first day of each month, the Contractor will receive an email or fax notification ("audit notice") indicating that a representative of its company needs to log-in to the NYSCS to report the company's MWBE subcontractor and supplier payments for the preceding month. The Contractor must also report when no payments have been made to a subcontractor or supplier in a particular month in the NYSCS. Once subcontractor and supplier payments have been entered into the NYSCS, the subcontractor(s) and supplier(s) will receive an email or fax notification advising them to log into the NYSCS to confirm that they actually received the reported payments from the Contractor. It is the Contractor's responsibility to educate its MWBE subcontractors and suppliers about the NYSCS and the need to confirm payments made to them in the NYSCS.
- C. To assist in the use of the NYSCS, OGS recommends that all Contractors and MWBE subcontractors and suppliers sign up for the following two webinar trainings offered through the NYSCS: "**Introduction to the System - Vendor training**" and "**Contract Compliance Reporting - Vendor Training**" to become familiar with the NYSCS. To view the training schedule and to register visit: <https://ny.newnycontracts.com/FrontEnd/TrainingList.asp>
- D. As soon as possible after the Contract is approved, Contractor should visit <https://ny.newnycontracts.com> and click on "**Vendor Account Lookup**" to identify the Contractor's account by company name. Contact information should be reviewed and updated if necessary by choosing "**Change Info.**" It is important that the staff member who is responsible for reporting payment information for the Contractor be listed as a user in the NYSCS. Users who are not already listed may be added through "**Request New User.**" When identifying the person responsible, please add "**MWBE Contact**" after his or her last name (i.e., John Doe – MWBE Contact) to ensure that the correct person receives audit notices from the NYSCS. NYSCS Technical Support should be contacted for any technical support questions by clicking on the links for "**Contact Us & Support**" then "**Technical Support**" on the NYSCS website.
- E. If Contractor is unable to report MWBE Contractor Compliance via the NYSCS, Contractor must submit a Monthly MWBE Contractor Compliance Report on Form MWBE 102 to OGS, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: OGS OBD Office, 29th floor Corning Tower, Empire State Plaza, Albany, NY 12242. Phone: 518-486-9284; Fax: 518-486-9285.
- F. It is the Contractor's responsibility to report subcontractor and supplier payments. Failure to respond to payment audits in a timely fashion through the NYSCS, or by paper to OGS, may jeopardize future payments pursuant to the MWBE liquidated damages clause in clause IX below.

- IX. Breach of Contract and Liquidated Damages
- A. Where OGS determines that the Contractor is not in compliance with the MWBE requirements of this Section, and the Contractor refuses to comply with such requirements, or if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, the Contractor shall be obligated to pay liquidated damages to OGS.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. If OGS determines that Contractor is liable for liquidated damages and such identified sums have not been withheld by OGS, Contractor shall pay such liquidated damages to OGS within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

X. 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>

Vendor must scroll down to the section titled COMMODITY & SERVICE CONTRACTS and use the appropriate forms under this section only.

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

Article 3 of the New York State Veterans' Services 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 service-disabled veteran-owned businesses 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 to discuss methods of maximizing participation by SDVOBs on the Contract.

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

6.22 Environmental Sustainability and NYS Executive Order Number 22

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. 22 (Leading By Example: Directing State Agencies to Adopt a Sustainability and Decarbonization Program), which imposes certain requirements on State Agencies, authorities, and public benefit corporations when procuring Products. More information on Executive Order No. 22, including specifications for offerings covered by this Contract, may be found at <https://ogs.ny.gov/greenny/>.

State entities subject to Executive Order No. 22 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.

6.23 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.

6.24 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.

6.25 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.

6.26 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.

6.27 NYS Vendor Responsibility

OGS conducts a review of prospective Contractors (“Bidders”) 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 complete the Questionnaire fully and accurately. 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 New York State Vendor Identification Number when enrolling. For information on how to request assignment of a 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.

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.

6.28 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. The ST-220-TD can be found at 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.

6.29 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*.

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.

6.30 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.

6.31 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.

6.32 Centralized Contract Modifications

- A. OGS, an Authorized User, or the Contractor may suggest modifications to the Centralized Contract or its Appendices. Except as specifically provided herein, modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the parties. Modifications may take the form of an update or an amendment. “Updates” are changes that do not require a change to the established Centralized Contract terms and conditions. A request to add new Products at the same or better price level is an example of an update. “Amendments” are any changes that are not specifically covered by the terms and conditions of the Centralized Contract, but inclusion is found to be in the best interest of the State. A request to change a contractual term and condition is an example of an amendment.
- B. Updates to the Centralized Contract and the Appendices may be made in accordance with the contractual terms and conditions to incorporate new Products, make price level revisions, delete Products, or to make such other updates to the established Centralized Contract terms and conditions, not resulting in a change to such terms and conditions, which are deemed to be in the best interest of the State.
- C. OGS reserves the right to consider modifications which are not specifically covered by the terms of the Centralized Contract, but are judged to be in the best interest of the State. Such modifications are deemed amendments to the Centralized Contract and may require negotiations between Contractor and OGS before execution.
- D. All modifications proposed by Contractor shall be processed in accordance with Appendix C, Contract Modification Procedure. The Contractor shall submit all requests in the form and format contained in Appendix C, Contract Modification Procedure. The form contained within Appendix C is subject to change at the sole discretion of OGS.
- E. Modifications proposed by OGS or an Authorized User, including updates and amendments, shall be processed in accordance with the terms of the Centralized Contract and Appendix B, *Modification of Contract Terms*.

6.33 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.

6.34 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.

6.35 Contract Documents; Electronic Format

OGS encourages Contractor to submit all documents to OGS in an electronic format, including electronic copies of documents with original signatures. Documents requested by OGS should be submitted in the format specified by OGS. Contractor is responsible for retaining the original documents with original signatures that have been scanned and submitted electronically for the term of the contract and any extensions thereof, and for a period of six (6) years after the term of the contract has ended. Contractor shall submit such documents with original signatures to OGS upon request.

If Contractor seeks to assign the contract during the term, Contractor shall provide all documents relating to the bid and contract that it has retained to the successor Contractor (assignee) upon OGS consent to the assignment.

6.36 New York State Buy American Salt Act

If the Bidder receives an award under this Solicitation for any Lot and/or County, and such award is based upon the preference set forth in the New York State Buy American Salt Act (State Finance Law § 162-a) for rock salt or sodium chloride that is mined or hand harvested in the United States and is within ten percent (10%) of the lowest priced offer for such Lot and/or County, then all rock salt or sodium chloride provided by the Bidder/Contractor under such award must be mined or hand harvested in the United States only, throughout the term of any Contract resulting from this Solicitation.