



Office of General Services Procurement Services

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

Invitation for Bids (Revised 3/11/2024)

BID OPENING DATE: Tuesday, March 19, 2024 TIME: 1:30 P.M. ET INVITATION FOR BIDS NUMBER: 23330	TITLE: Group 33700 - Aggregates (Abrasive, Crusher Run, Geotechnical Fill) (Statewide) Classification Codes: 11
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CONTRACT PERIOD:	The later of (i) April 15, 2024, or (ii) the date of OSC approval through March 31, 2026
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DESIGNATED CONTACTS: In accordance with the Procurement Lobbying Law [State Finance Law § 139-j(2)(a)], the following individuals are the Designated Contacts for this Solicitation. All questions relating to this Solicitation must be addressed to the Designated Contacts.

Email Address: Brandy.Alden@ogs.ny.gov

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:
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If applicable, place an "x" in the appropriate box(es) (check all that apply)			
<input type="checkbox"/> NYS Small Business # Employees	<input type="checkbox"/> Service Disabled Veteran Owned Business	<input type="checkbox"/> NYS Minority Owned Business	<input type="checkbox"/> NYS Women Owned Business

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 7

 1.4 Key Events/Dates 8

 1.5 NYS Contract Reporter 8

 1.6 Bidder Questions 8

 1.7 NYS Comptroller Approval 9

 1.8 MWBE & SDVOB Interest in Partnering with Bidders 9

 1.9 Summary Of Policy And Prohibitions On Procurement Lobbying 9

 1.10 Definitions 10

 1.11 Appendices and Attachments 11

 1.12 Conflict of Terms 11

SECTION 2: BIDDER QUALIFICATIONS 12

SECTION 3: SPECIFICATIONS 13

 3.1 Specifications 13

 3.2 References 14

SECTION 4: BID SUBMISSION 15

 4.1 Performance and Bid Bonds 15

 4.2 NYS Vendor File Registration 15

 4.3 Format of Bid Submission 15

 4.4 Content 16

 4.5 Bid Envelopes and Packages 17

 4.6 Bid Delivery 18

 4.7 Important Building Access Procedures 18

 4.8 NYS Required Certifications 18

 4.9 Bid Deviations 18

 4.10 Bid Opening Results 19

 4.11 Bid Liability 19

 4.12 Firm Offer 19

 4.13 NYS Reserved Rights 19

 4.14 Incorporation 20

SECTION 5: METHOD OF AWARD 21

 5.1 Method of Award 21

 5.2 Evaluation Process 21

 5.3 Notification of Award 22

SECTION 6: TERMS AND CONDITIONS 23

 6.1 Contract Term and Extensions 23

 6.2 Short term Extension 23

6.3	Price	23
6.3.1	Material Items Pricing	23
6.3.2	Optional Items Pricing (Transportation/Hauling)	23
6.4	Procurement Instructions for Authorized Users	24
6.5	Purchases Outside of Region	24
6.6	Quick Quote Process	25
6.7	Price Adjustment	25
6.8	Best Pricing Offer	26
6.9	Price Structure	27
6.10	Furnished Material Item(s) - Requirements	27
6.11	Ordering	27
6.12	Purchasing Card Orders	27
6.13	Minimum Order	27
6.14	Invoicing and Payment	28
6.15	Product Returns and Exchanges	28
6.16	Unanticipated Excessive Purchase	29
6.17	Contract Administration	29
6.18	NYS Financial System (SFS)	29
6.19	Americans with Disabilities Act (ADA)	29
6.20	N.Y. State Finance Law § 139-I	29
6.21	Insurance	30
6.22	Report of Contract Usage	30
6.23	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	31
6.24	Participation Opportunities For New York State Certified Service-Disabled Veteran Owned Businesses	33
6.25	Environmental Sustainability and NYS Executive Order Number 22	34
6.26	Diesel Emission Reduction Act	34
6.27	Overlapping Contract Products	34
6.28	Preferred Source Products	34
6.29	NYS Vendor Responsibility	35
6.30	NYS Tax Law Section 5-a	36
6.31	“OGS or Less” Guidelines	36
6.32	Non-State Agencies Participation in Centralized Contracts	36
6.33	Extension of Use	37
6.34	New Accounts	37
6.35	Drug and Alcohol Use Prohibited	37
6.36	Traffic Infractions	37
6.37	Samples	37
6.38	Re-Weighing Product	38

6.39	Contract Documents; Electronic Format.....	38
6.40	Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.....	38
6.41	Prevailing Wage Rates – Public Works and Building Services Contracts.....	38

SECTION 1: INTRODUCTION

1.1 Overview

This Solicitation is issued by the New York State (“NYS”) Office of General Services (“OGS”), Procurement Services for **Aggregates (Abrasive, Crusher Run, Geotechnical Fill)** 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

This Solicitation and any resultant Contract(s) are intended to provide a procurement mechanism for all Authorized Users to purchase Aggregates as defined herein and as specified in Attachment 1 - *Pricing*.

The Contract Award Notification shall be comprised of Contractors who can provide Aggregates to Authorized Users as needed and as provided for in this Invitation for Bids.

Bidder can only submit one bid per source location, indicating the NYSDOT Region where the source location is sited.

If a Bidder is submitting bids from different source locations, Bidder must include a separate Attachment 1- Pricing labeled as “YOUR COMPANY NAME – SOURCE” for each source location.

This Solicitation includes only the Material Items shown below:

Material Item #	Description
203.07	Select Granular Fill
203.20	Select Granular Fill - Sub-grade
304.11	Type 1 Sub-base Coarse
304.12	Type 2 Sub-base Coarse
304.14	Type 4 Sub-base Coarse
620.02	Fine Stone Fill
620.03	Light Stone Fill
620.04	Medium Stone Fill
620.05	Heavy Stone Fill
620.06	Rip Rap Stone
703-0201A	Crushed Stone – Size 1A
703-0201B	Crushed Stone – Size 1ST
703-0201C	Crushed Stone – Size 1
703-0201D	Crushed Stone – Size 2
703-0201F	Crushed Stone – Size 3
703-0202A	Crushed Gravel – Size 1A

(Table continued on next page)

Material Item #	Description
703-07	Concrete Sand
712-15A	Gabion Stone (Basket height = 12 inches)
A1	Crusher Run – Size 1 inch
A2	Crusher Run – Size #1, etc
A3	Crusher Run – Size 1 inch
A4	Crusher Run – Size 1.5 inches
A5	Crusher Run – Size 2 inches
Abrasive A	Abrasive Gradation A

The items comprising Transportation/Hauling are considered “Optional Items.” Bids for Optional Items (Transportation/Hauling) are voluntary (please see Attachment 1 – Pricing).

This Solicitation includes the following Optional Items:

Optional Items - Transportation/Hauling
0-1 Mile
1+ Mile
Additional Charge Per 1+ Mile For Hauling 620.04
Additional Charge Per 1+ Mile For Hauling 620.05
Additional Charge Per 1+ Mile For Hauling 620.06

1.3 Estimated Quantities

A Contract resulting from this Solicitation shall be an estimated quantity Contract. No specific quantities are represented or guaranteed, and the State provides no guarantee of individual Authorized User participation. The Contractor must furnish all quantities actually ordered at or below the Contract prices. The anticipated dollar value of the award for this Solicitation, based on historical purchases under previous awards, is approximately \$2,000,000.00 annually. The individual value of each resultant Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered. Authorized Users will be encouraged to purchase from Contractors who offer the Products and pricing that best meet their needs in the most practical and economical manner. See Appendix B, Estimated/Specific Quantity Contracts and Participation in Centralized Contracts.

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

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

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

1.4 Key Events/Dates

EVENT	DATE	TIME
IFB Release	11/15/2023 (Tentative)	N/A
Closing Date for Bidder Questions	11/29/2023	5:00 PM ET
OGS Procurement Services' Responses to Bidder Questions	3/12/2024 (Tentative)	N/A
Bid Opening / Due date for Bids	3/19/2024	1:30 PM ET
Contract Approval Date / Award Publish Date	Upon OSC Approval	N/A

1.5 NYS Contract Reporter

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

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

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

1.6 Bidder Questions

All questions regarding this Solicitation should be submitted using Attachment 7 – *Bidder Questions Form*, citing the applicable Solicitation document name and document section. The completed form must be emailed to Brandy.Alden@ogs.ny.gov 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 23330 MWBE or SDVOB INTEREST_COMPANY NAME*" to Brandy.Alden@ogs.ny.gov on or before the bid opening date.

The e-mail content should include:

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

“Aggregates” shall refer to inert granular materials such as sand, gravel or crushed stone used in the construction industry for applications such as constructing embankments, drainage, erosion control, and sub-base material surface treatments for roads.

“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.

“Material Item” shall refer to the individual Aggregates materials listed in Section 3.1, Materials, and Attachment 1 – *Pricing*.

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

“NYSDOT” shall refer to the NYS Department of Transportation.

“NYSDOT Region” shall refer to one of eleven geographical subdivisions of the State used by NYS Department of Transportation to designate or identify the geographic location of a material’s source.

“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 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 Attachments

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

APPENDICES

- Appendix A – *Standard Clauses for NYS Contracts* (June 2023)
- Appendix B – *General Specifications* (April 2016)
- Appendix C – *Federal Funding Agency Mandatory Terms and Conditions*.

ATTACHMENTS

- 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 - *Abrasive A Detailed Specifications*
- Attachment 11 - *Supply Source Certificate*
- Attachment 12 - *Abrasive A: Gradation Analysis*
- Attachment 13 - *NYSDOT Regions Map*

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. Appendix C – *Federal Funding Agency Mandatory Terms and Conditions*;
3. The Solicitation;
4. Appendix B, General Specifications;
5. 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, 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.

Bidder shall meet the following qualifications for the provision of the Material Items specified in Section 1.2, Scope and Section 3.1, Specifications:

- a. Bidder is an Aggregates supply source, meaning that Bidder owns, or leases, or manages and controls an Aggregates supply source adequate for, and devoted to, the manufacture of the Material Item(s) which it proposes to furnish pursuant to this Solicitation; **or**
- b. Bidder possesses (and shall make available to Procurement Services) a copy of Attachment 11 - *Supply Source Certificate*, from another entity acting in its capacity as an Aggregates supply source. This copy of Attachment 11 -*Supply Source Certificate* shall be completed and signed by an individual who is authorized to sign on behalf of such entity.

Bid Requirements for Locations with a NYSDOT Source Number

Bidder must indicate in its Bid, in Attachment 1 - *Pricing*, the Aggregates supply source locations and the NYSDOT Source Number from which it will supply materials in the event of an awarded Contract pursuant to this Solicitation.

The most current published list for sources of Aggregates can be found on the NYSDOT public website at <https://www.dot.ny.gov/divisions/engineering/technical-services/materials-bureau/fine-coarse-aggregates>

This webpage contains a link to the Materials Supplier Viewer which shows statewide Aggregates supply sources for asphalt and concrete, as well as granular sources for geotechnical applications, and NYSDOT-approved asphalt and concrete plants. The webpage also contains a link to the NYSDOT Regional Materials Offices and contact information for the NYSDOT Regional Materials Engineers and the Materials Geology Section. NYSDOT Regional Materials Engineers and the Materials Geology Section can also provide Authorized Users the most current (real-time) approval status of any source. The internet-published Materials Supplier Viewer is updated nightly and reflects any changes to an Aggregates supply source's approval status, including any restrictions on use. Authorized Users are advised to either check the DOT website or verify with the respective NYSDOT Regional Materials Engineer before purchasing materials that require an approved source.

For Crusher Run Material Item Numbers A1 through A5 specified in Section 3.1, Materials, where Bidder indicates that it intends to supply Material Item from a location other than a NYSDOT Source Number location, Bidder must also provide truck scales at that location meeting the following requirements:

- a. Truck scales shall be a platform scale conforming to the requirements of National Institute of Standards and Technology Handbook 44 and of sufficient capacity and size to weigh the largest vehicle in one weighing.
- b. Truck scales used for determining delivered quantity at the stockpile site shall be equipped with recording device of a type approved by the Director, Materials Bureau of NYSDOT. The recorder shall produce a ticket with a time-date print and any two of the following weights: gross, net or tare.

Tare weights shall be derived either by weighing each truck empty that was used for a delivery, or the tare weight may be present and printed or manually entered on the ticket. When the tare weight is not derived by weighing each empty truck used for a delivery, tare weights for each truck shall be checked twice a day or more frequently as required by the NYSDOT Regional Director or their representative. Provisions shall be made, by the Contractor, so that scales may not be manually manipulated during the printing process. In addition, the system shall be interlocked to allow printing only when the scale has come to a complete rest.

Note: Failure by a Bidder to provide any of the requested information above or meet any of the above qualifications in whole or in part may result in a rejection of that Bidder's bid.

SECTION 3: SPECIFICATIONS

3.1 Specifications

The following are the descriptions of Material Items that are included in this Solicitation.

MATERIAL #	DESCRIPTIVE TITLE	MISCELLANEOUS NOTES	MATERIAL USE
203.07	Select Granular Fill	The top size can be up to 4 inches in maximum dimension	Used for backfill around pipes, etc. It is usually a sandy type material
203.20	Select Granular Fill Sub-grade	The maximum size is 12 inches	Used to construct roadway sub-grades, which are placed under sub-bases
304.11 304.12 304.14	Type 1 Sub-base Course Type 2 Sub-base Course Type 4 Sub-base Course	Type 1 is the most commonly used sub-base course. Different items and densities correspond with different gradations	Used to construct pavement sub-bases. Commonly referred to as gravel, although it may be crushed stone, slag, etc. Not for use as a finished surface for a gravel road.
620.02 620.03 620.04 620.05 620.06	Fine Stone Fill Light Stone Fill Medium Stone Fill Heavy Stone Fill Rip Rap Stone	Ranges from 3 inches in diameter for fine stone fill to 2 feet for heavy stone fill.	Used for bank and channel protection (erosion control). This material is dumped from trucks, not individually placed.
703-0201A 703-0201B 703-0201C 703-0201D 703-0201F	Crushed Stone – Size 1A Crushed Stone – Size 1ST Crushed Stone – Size 1 Crushed Stone – Size 2 Crushed Stone – Size 3	Top sizes range from 3/16 inches to 1.5 inches. Produced from ledge rock. Not available locally in the entire state.	Used for bituminous surface treatment, hot mix asphalt, concrete, etc. Equivalent performance to crushed gravel.
703-0202A	Crushed Gravel – Size 1A	90-100% passing the 1/4" sieve, 0-15% passing the 1/8" sieve	Used for bituminous surface treatment, hot mix asphalt, concrete, etc. Equivalent performance to crushed stone.
703-07	Concrete Sand	Natural sand or manufactured sand. Gradations for each item are specified in the NYSDOT Standard Specifications, most current version.	Used as fine aggregate component in Concrete.
712-15A	Gabion Stone	4"-8"	Used for gabion baskets
A1 A2 A3 A4 A5	Crusher Run	Maximum top size 1" Maximum top size # 1 Maximum top size 1" Maximum top size 1.5" Maximum top size 2"	Generally used as bulk fill to stabilize structures. May also be used for footpaths and shoulder backup.
Abrasive A	Abrasive-Gradation A	Natural sand or manufactured sand. Gradations for each item are specified in Attachment 10 – <i>Abrasive A Detailed Specifications</i>	Used to treat snow and ice on pavements

3.2 References

References are made herein to New York State Department of Transportation, Standard Specifications, most current version and all current addenda at the time of the bid opening.

<https://www.dot.ny.gov/main/business-center/engineering/specifications/updated-standard-specifications-us>

For materials where the NYSDOT approved list is referenced, the list may be found on the NYSDOT's website:

<https://gisportalny.dot.ny.gov/portalny/apps/webappviewer/index.html?id=4c02ef6c95fd481daf82d37306832a25>

The NYSDOT Approved Materials Suppliers can be found by using the following link:

<https://www.dot.ny.gov/divisions/engineering/technical-services/materials-bureau/fine-coarse-aggregates>

For information regarding how to become an approved source or to make arrangements for inspection of materials when required, contact the Regional Materials Engineer using the contact information in the following link:

<https://www.dot.ny.gov/divisions/engineering/technical-services/technical-services-repository/alag/rome.html>

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

A complete Bid consists of the following:

Two (2) USB flash drives each containing the following completed documents, and hard copy documents as indicated in the table below:

	<u>BID DOCUMENT</u>	<u>ELECTRONIC (USB)</u>	<u>ORIGINAL (HARD COPY)</u>
a.	Completed Page 1 of the Solicitation	X (PDF)	X
b.	Completed Page 2 of the Solicitation, <i>Bidder Certification and Affirmation</i> , with original ink signature	X (PDF)	
c.	Completed Attachment 1 – <i>Pricing</i> . If a Bidder is submitting bids from different source locations, Bidder must include a separate Attachment 1 - <i>Pricing</i> labeled as “YOUR COMPANY NAME – SOURCE” for each separate location. Bidder can only submit one bid per source location, indicating the NYSDOT Region where the source location is sited. These price pages must be saved to the flash drives in <u>Microsoft Excel format</u> and they should also be sent as part of the Bid proposal as a PDF before the Bid opening.	X (Excel)	X
d.	Bid Solicitation Update(s) (if applicable), with original ink signature	X (PDF)	
e.	Completed Attachment 2 – <i>NYS Required Certifications</i> with original ink signature	X (PDF)	
f.	Completed Attachment 3 – <i>Encouraging Use of NYS Businesses</i>	X (PDF)	
g.	Proof of Compliance with Attachment 4 – <i>Insurance Requirements</i>	X (PDF)	
h.	Completed Attachment 5 – <i>Bidder Information Questionnaire</i>	X (Excel)	
i.	Completed Attachment 6 – <i>Bidder Submission Checklist</i>	X (Excel)	
j.	Attachment 7 – <i>Bidder Questions Form</i>	Not required to be submitted with the bid	
k.	Attachment 8 – <i>Report of Contract Usage</i>	Not required to be submitted with the bid	
l.	Completed Attachment 9 – <i>Certification Under Executive Order No. 16</i> with original ink signature	X (PDF)	
m.	Attachment 10 – <i>Abrasive A Detailed Specifications</i>	Not required to be submitted with the bid	

(Continued on next page)

n.	Attachment 11 – <i>Supply Source Certificate</i> (if applicable)	X (PDF)	
o.	Attachment 12 – <i>Abrasive A: Gradation Analysis</i> (applicable if Bidder is submitting a bid for Material Item Abrasive A)	X (PDF)	
p.	Attachment 13 – NYSDOT Regions Map	Not required to be submitted with the bid	
q.	Completed Appendix C – <i>Federal Funding Agency Mandatory Terms and Conditions</i> with original ink signature and Section 10 completed.	X (PDF)	
r.	Completed ST-220CA – Contractor Certification to Covered Agency, notarized with original ink signatures https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf	X (PDF)	
s.	Completed EEO 100 – Equal Employment Opportunity Staffing Plan with original ink signature: http://ogs.ny.gov/MWBE/Forms	X (PDF)	
t.	Completed Standard Vendor Responsibility Questionnaire with original ink signature or Certification that a Questionnaire has been completed online	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 #23330)
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 and Attachment 1 - Pricing, completed with the Bidder's information. These printed copies of page 1 and Attachment 1 – Pricing 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 1.4, *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 23330

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 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.

4.10 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>.

4.11 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.

4.12 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.

4.13 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.
- X. Take any steps necessary, at OGS's sole discretion, including, but not limited to, reissuing the Solicitation or adjusting applicable Contract pricing to ensure that Contractors may comply with Department of Labor regulation 12 NYCRR § 222.2(c) (the section of the rule pertaining to the 50-mile radius for paying prevailing wage for hauling of aggregate supply construction materials) in the event the temporary stay of enforcement currently in place is lifted in the future.

4.14 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

The Contracts resulting from this IFB will be centralized Contracts issued under a multiple award structure. Award shall be made for each Material Item and each Optional Item in each NYSDOT Region to all responsive and responsible Bidders.

Bidders shall submit pricing for specified Items using Attachment 1 – *Pricing*. Bidders may bid on as few or as many Items as they choose. Bidders are not required to bid on all Items.

It is anticipated that award will be made to more than one Bidder for each Item in each NYSDOT Region; however, the State is not required to make award to more than one Bidder for each Item in each NYSDOT Region.

Bids for Optional Items (Transportation/Hauling) are voluntary (please see Attachment 1 – *Pricing*). Awards for Material Items will not be affected by the presence or lack of Optional Items bid.

5.2 Evaluation Process

1. An “average price” per specified Item in Attachment 1 – *Pricing* per NYSDOT Region of supply shall be calculated based on the price of all bids submitted. The average price will be calculated to two decimal places. If a bid is ultimately rejected because it did not meet specification, pricing will not be recalculated. However, in those instances where the rejected Bidder’s pricing results in no awarded Bidder(s) for a NYSDOT Region, the rejected Bidder’s pricing will be removed and not considered a part of the calculation. A price which is inordinately low may be deleted from the calculation.
2. Any bid price that exceeds the “average price” for that Item by more than 40% will be made Award Pending (AP) unless it is apparent that application of 40% would be unreasonable due to higher market prices of a geographic location. Under such circumstances, at the discretion of the Commissioner, bids may be considered by geographic location and an average price determined to address pricing in such geographic location.
3. A “revised average price” per specified Item shall be calculated after removal of those exceeding the average price increased by 40%. The “revised average price” will be calculated to two decimal places. Bid prices over the 40% criteria that have been given consideration due to geographic location will not be part of the “revised average price.” A price which is inordinately low may be deleted from the calculation.
4. Any bid price that is less than or equal to the “revised average price” for that Item increased by 10% shall receive a Contract Award if they are also deemed a responsive and responsible Bidder. Any bid price that exceeds the “revised average price” for that Item by more than 10% will be made Award Pending.
5. Any Contractor given an Award Pending for any Item may become eligible for award by reducing their price(s) within the parameters of paragraph #4 above. Acceptable revised pricing for “Award Pending” Items must be submitted within ten (10) business days from the time the Contractor is notified of said APs by OGS. All pricing that was considered “AP” during the award process and that did not become eligible for award after the ten-day period mentioned above will be given a “No Award” (NA) status for the remaining contract period.
6. For the purpose of the Invitation for Bids, the items comprising Transportation/Hauling are considered “Optional Items.” All other items are considered to be “Material Items.”
7. In order to obtain an award for Transportation/Hauling in a NYSDOT Region, both Optional Items (0-1 miles and +1 miles) shall be bid and given an award. Otherwise both items will be given a “No Award” (NA) status for the remaining contract period.

(Continued on the next page)

Any bid (set of prices) for a specific source location where all bid pricing for “Material Items” have been given a status of “Award Pending” will not be given an award until such time as the Bidder submits acceptable pricing for the affected items.

Any bid (set of prices) for a specific source location that only contains bid pricing for “Optional Items” will be rejected and will not be given an award.

The State reserves the right to reject an obviously unbalanced bid or to make “No Award” on individual Items if 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 the State. Options contained in this paragraph shall also be at the State’s sole discretion. All pricing recommended for award based on the above criteria will be subject to comparison to previous years pricing and current market trends

5.3 Notification of Award

Tentative award of a 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 term shall commence after all necessary approvals and shall become effective (i) April 15, 2024, or (ii) upon the date of OSC approval of the final executed documents, whichever is later, and the Contract term shall end on March 31, 2026.
- B. Extensions: 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 an additional two (2) year period. The Contract extension may be exercised on a month-to-month basis such as an additional three-month, six month, twelve month, or twenty-four-month period.
- 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

6.3.1 Material Items Pricing

Price quoted shall include all custom duties and charges and shall be FOB source location per net ton. Price quoted shall be to two (2) decimal places. Price adjustments, if any, will be calculated on the basis of when the Material Item is actually furnished.

Pricing will be collected using Attachment 1 – *Pricing*.

6.3.2 Optional Items Pricing (Transportation/Hauling)

Should the Bidder bid Transportation/Hauling, the price quoted shall be the net charge per ton mile for Transportation/Hauling, including all customs, duties and transportation/hauling, and shall be FOB destination to any place within any NYSDOT Region(s) where contract Optional Items are awarded to that Contractor.

Bidders shall be allowed to quote additional charges per net ton for hauling materials 620.04, 620.05 and 620.06. Price quoted shall be to two (2) decimal places.

Bids for Transportation/Hauling costs will be based on a sum of two (2) prices. One price will be bid for transportation for 0 to 1 mile (0-1) and another price will be bid for any additional miles (1+). The total distance will equal the distance in roadway miles from the Contractor location to the delivery site (one way, not round trip).

The 0 to 1 mile price will be the bid price for any distance traveled up to, and including, one mile. This 0 to 1 mile bid price will be added to the Material Item cost. This final figure will constitute the cost to deliver one ton of material up to one mile.

The 1+ mile price will be the bid price for any distance traveled after the first mile. For the total delivery charge for 1+ miles, the 1+ mile bid price will be multiplied by the total number of miles (less the first mile). This total delivery charge for 1+ miles will then be added to the bid price for 0-1 mile and the Material Item cost, to arrive at the Total Charge for Material Item (including Delivery) per ton: which is the cost to deliver one ton of material the total number of miles from the Contractor location to the delivery site (one way, not round trip). When utilizing Transportation/Hauling, price shall be FOB destination as designated by ordering agency.

Example for 20 miles with transportation/hauling:

Price bid for (0-1) Mile (example) =	\$2.00
Price bid for (1+) Miles (example) =	\$0.40
Price bid for Material (example) =	\$15.00
Delivery charge for (0-1) Mile or portion thereof as bid (example) =	\$2.00
Total miles to apply to (1+) Miles bid price (example) are (20-1) =	19 miles
Total Delivery charge for (1+) Miles as bid (example): \$0.40 x 19 miles=	\$7.60
Total Delivery charge per ton (for the entire distance of 20 Miles) =	\$9.60
Total Charge for Material Item (including Delivery) per ton =	\$24.60

6.4 Procurement Instructions for Authorized Users

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

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

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

6.5 Purchases Outside of Region

Authorized Users will be able to purchase from any awarded Contractor included under the resultant contract(s) from this Invitation for Bids. There are no purchasing restrictions by NYSDOT Region or by County when selecting an awarded Contractor.

Authorized Users should consider all awarded Contractors located within their county as well as all the counties surrounding (including those counties that fall in a different NYSDOT Region) before soliciting quotes.

Authorized Users may wish to make purchases outside of their NYSDOT Regional location if better pricing can be obtained. Total price of Material Item and Transportation/Hauling should always be considered.

6.6 Quick Quote Process

Authorized Users may select the appropriate contractor to perform their particular project by using the quick quote worksheet form.

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

During the course of the Contract Authorized Users may wish to obtain lower prices, and Contractors may wish to lower their Contract prices for various reasons (e.g. excess supply, slow business, etc.). This can be accomplished through the use of the Quick Quote Form, which OGS will publish on its public website at the time of Contract award for use by Authorized Users. Each quick quote situation is unique, and the price is firm for that particular project only. If bid security is a concern, the Authorized User may require bids (Quick Quotes) to be sealed and/or opened publicly.

The Quick Quote Form should be sent to the contractors in its MS Excel format. The contractor should quote a price for every single line item that the Authorized User is requesting. The use of the Quick Quote Form will be optional (at the Authorized User's discretion) only in cases where the Material Item is being picked up by the Authorized User directly from the Source Location.

If the Price Pages published by OGS show a No Bid (NB) or a No Award for any Material Item under a specific Source Location that means the Contractor will not be permitted to submit a price for that Material Item supplied from that specific Source Location. Under those circumstances, if a Quick Quote is received, the Authorized User should reject it.

Authorized Users utilizing the Quick Quote Form are required to award to the lowest responsive bid meeting the requirements outlined in the requested quote. There are no negotiations permitted following the Quick Quote application and prices cannot be changed once offered. If award is made to other than the lowest bid, the Authorized User must prepare detailed documentation explaining the action taken for the failure of the lowest bid to meet the requirements (e.g. the low Contractor could not provide the product in the time frame required, Contractor did not have necessary equipment, etc.). This explanation along with the worksheets must be made a part of the procurement record.

Contractors are not required to lower prices when they receive a quick quote. They may quote the full contract price, however, at no time may a quick quote unit price (without the Price Adjustment) exceed the awarded contract price. Materials cost, hauling expenses, etc., can be lowered by the contractor during the quick quote process.

6.7 Price Adjustment

The prices set forth in this Contract shall be adjusted (either upward or downward) every three months starting on July 1st, 2024 in accordance with the provisions of this clause. There shall be no price adjustments until July 1st, 2024.

The prices shall be adjusted on the basis of the not seasonally adjusted **Producer Price Index (PPI) Series ID: PCU21231-21231-, Stone Mining & Quarrying**, published by the U.S. Department of Labor (DOL), Bureau of Labor Statistics (BLS). The index is also available through the internet at the BLS website at: <https://data.bls.gov/cgi-bin/dsrv?pc>.

Calculations shall be based on the first-published values for the price adjustment month for comparison. Any published figure used that is preliminary will not be updated should a different figure replace it as permanent in the future. In the event the current data for the referenced PPI is unavailable or the index becomes discontinued, OGS reserves the right to utilize a successor index in the best interest of the State.

The adjustment shall be established as follows:

- A price adjustment shall be effective beginning on July 1st, 2024 and then every three months thereafter.
- A **base index** shall be established utilizing the **PPI preliminary value of 425.909(P) for September 2023**; this shall remain constant throughout the duration of the contract.
- An **adjustment index** shall be established utilizing the PPI on the established adjustment index month.

- The adjustment shall be based on the percentage of increase or decrease in the PPI on the established **adjustment index** month versus the **base index**.
- The **adjustment index** is divided by **base index** to establish the adjustment percent change, then this value is multiplied by the originally awarded Material Item unit prices and Optional Item unit prices to yield the adjusted prices effective for all Purchase Orders issued during the applicable periods shown in *Dates for Implementation of Price Adjustments* table below. The adjustment percent shall be rounded to the nearest hundredth and shall be applied to the Contract unit prices.
- Price increases **shall not exceed 10.0%** for any given adjustment period.
- In the event of a delay in the contract start date, the State reserves the right to modify the dates in the table accordingly.

Sample Calculation (all figures are used solely for illustrative purposes)

Base Index	326.3
Adjusted Index	330.3
Percent Change	$330.3/326.3 = 1.01$
Base Unit Price	\$12.50
Multiplied by	1.01
Equals Adjusted Price	\$12.63

OGS Procurement Services will publish the adjustment percent change following each adjustment period indicated in the table below.

Dates for Implementation of Price Adjustments

Effective Date for Adjustment	Base Index Month	Adjustment Index Month
July 1 st , 2024	September 2023	April 2024
October 1 st , 2024	September 2023	July 2024
January 1 st , 2025	September 2023	October 2024
April 1 st , 2025	September 2023	January 2025
July 1 st , 2025	September 2023	April 2025
October 1 st , 2025	September 2023	July 2025
January 1 st , 2026	September 2023	October 2025

The State reserves the right to modify or correct miscalculations or errors in the PPI Price Adjustment as set forth in this Section.

6.8 Best Pricing Offer

During the Contract term, if substantially the same or a smaller quantity of a Product is sold by the Contractor 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, at the discretion of the Commissioner, shall be immediately reduced to the lower price.

6.9 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.

6.10 Furnished Material Item(s) - Requirements

All Material Items specified in Section 1.2, Scope and Section 3.1, Specifications must meet the requirements outlined in the most current version of Department of Transportation, Standard Specifications, Construction and Materials.

6.11 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).

NYSDOT Approved aggregate source, along with any use restrictions, are periodically updated on NYSDOT website found here: <https://www.dot.ny.gov/divisions/engineering/technical-services/materials-bureau/fine-coarse-aggregates>. Authorized Users are responsible for checking the current status of the NYSDOT approved source location they are planning to purchase from before placing an order. If the awarded source location shows a NYSDOT non-approved status for a particular Material Item, the Authorized User should not purchase that Material Item from that source location until it regains a NYSDOT approved status.

6.12 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.

6.13 Minimum Order

The minimum quantity of material per purchase order under any resulting Contract shall be one truckload, unless otherwise waived by the Contractor.

6.14 Invoicing and Payment

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

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

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

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

6.15 Product 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.

6.16 Unanticipated Excessive Purchase

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

6.17 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.

6.18 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/>.

6.19 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.

6.20 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.

6.21 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*.

6.22 Report of Contract Usage

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

<u>Report</u>	<u>From</u>	<u>To</u>	<u>Report Due Date</u>
1 st	Contract Start	4/14/2025	5/1/2025
2 nd	4/15/2025	9/30/2025	10/15/2025
3 rd	10/1/2025	Contract End	5/1/2026

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.

This Contract may be terminated if, on the one-year anniversary date of the Contract Award, and annually thereafter, the reports required to be filed under this Section show that the Contractor has made no sales to any Authorized User under the Contract for the prior year. Termination of the Contract under this Section is in addition to Appendix B – Termination, and shall take effect upon written notification to the Contractor. The Contract may also be terminated for failure to file the reports required under this Section.

6.23 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

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

I. New York State Law

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

II. General Provisions

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

III. Equal Employment Opportunity (EEO)

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

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

B. Form EEO 100 – Staffing Plan

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

C. NYS Contract System Workforce Utilization Reporting Module (Commodities & Services)

1. 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 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>.

2. Separate audits shall be completed by Contractor and all subcontractors utilized on this contract and the Contractor is responsible for ensuring timely submission of the Workforce Audit by their subcontractors.

3. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall 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 and all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. Contract Goals

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

B. Good Faith Efforts

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

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

V. Fraud

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

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

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

6.24 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/>

6.25 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.

6.26 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.

6.27 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.

6.28 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.

6.29 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 fully and accurately complete the Questionnaire. The Bidder acknowledges that the State’s execution of the Contract will be contingent upon the State’s determination that the Bidder is responsible, and that the State will be relying upon the Bidder’s responses to the Questionnaire, in addition to all other information the State may obtain from other sources, when making its responsibility determination.

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

Vendors must provide their 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.

6.30 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.

6.31 "OGS or Less" Guidelines

Purchases of the Products included in the Solicitation and resulting Contract are subject to the "OGS or Less" provisions of State Finance Law § 163(3)(a)(v). This means that State Agencies can purchase Products from sources other than the Contractor provided that such Products are substantially similar in form, function or utility to the Products herein and are (1) lower in price and/or (2) available under terms which are more economically efficient to the State Agency (e.g. delivery terms, warranty terms, etc.).

Agencies are reminded that they must provide the State Contractor an opportunity to match the non-Contract savings at least two business days prior to purchase. In addition, purchases made under "OGS or Less" flexibility must meet all requirements of law including, but not limited to, advertising in the New York State Contract Reporter, prior approval of the Office of the State Comptroller and competitive bidding of requirements exceeding the discretionary threshold. State Agencies should refer to Procurement Council Guidelines for additional information.

6.32 Non-State Agencies Participation in Centralized Contracts

New York State political subdivisions and others authorized by New York State law may participate in Centralized Contracts. These include, but are not limited to, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See Appendix B, Participation in Centralized Contracts. For Purchase Orders issued by the Port Authority of New York and New Jersey (or any other authorized entity that may have delivery locations adjacent to New York State), the terms of the Price clause shall be modified to include delivery to locations adjacent to New York State.

Upon request, all eligible non-State agencies must furnish Contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. A list of categories of eligible entities is available on the OGS web site (<https://online.ogs.ny.gov/purchase/snt/othersuse.asp>).

Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to NYS Procurement Services Customer Services at 518-474-6717.

6.33 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.

6.34 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.

6.35 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.

6.36 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.

6.37 Samples

A. Bidder Supplied Samples - The Commissioner reserves the right to request from the Bidder/Contractor a representative sample(s) of the Product offered at any time prior to or after award of a Contract. Unless otherwise instructed, samples shall be furnished within the time specified in the request. Untimely submission of a sample may constitute grounds for rejection of the Bid or cancellation of the Contract. Samples must be submitted free of charge and be accompanied by the Bidder's name and address, any descriptive literature relating to the Product and a statement indicating how and where the sample is to be returned. Where applicable, samples must be properly labeled with the appropriate Solicitation or Contract reference.

A sample may be held by the Commissioner during the entire term of the Contract and for a reasonable period thereafter for comparison with deliveries. At the conclusion of the holding period, the sample, where feasible, will be returned as instructed by the Bidder, at the Bidder's expense and risk. Where the Bidder has failed to fully instruct the Commissioner as to the return of the sample (i.e., mode and place of return, etc.) or refuses to bear the cost of its return, the sample shall become the sole property of the receiving entity at the conclusion of the holding period.

B. Enhanced Samples - When an approved sample exceeds the minimum specifications, all Product delivered must be of the same enhanced quality and identity as the sample. Thereafter, in the event of a Contractor's default, the Commissioner may procure a Product substantially equal to the enhanced sample from other sources, charging the Contractor for any additional costs incurred.

C. Conformance with Samples - Submission of a sample (whether or not such sample is tested by, or for, the Commissioner) and approval thereof shall not relieve the Contractor from full compliance with all terms and conditions, performance related and otherwise, specified in the Solicitation. If in the judgment of the Commissioner the sample or Product submitted is not in accordance with the specifications or testing requirements prescribed in the Solicitation, the Commissioner may reject the Bid. If an award has been made, the Commissioner may cancel the Contract at the expense of the Contractor.

- D. Testing - All samples are subject to tests in the manner and place designated by the Commissioner, either prior to or after Contract award. Unless otherwise stated in the Solicitation, Bidder samples consumed or rendered useless by testing will not be returned to the Bidder. Testing costs for samples that fail to meet Contract requirements may be at the expense of the Contractor.
- E. Requests for Samples by Authorized Users - Requests for samples by Authorized Users require the consent of the Contractor. Where Contractor refuses to furnish a sample, Authorized User may, in its sole discretion, make a determination on the performance capability of the Product or on the issue in question.

6.38 Re-Weighing Product

Deliveries are subject to re-weighing at the point of destination by the Authorized User. If shrinkage occurs which exceeds that normally allowable in the trade, the Authorized User shall have the option to require delivery of the difference in quantity or to reduce the payment accordingly. Such option shall be exercised in writing by the Authorized User.

6.39 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.

6.40 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

In accordance with Section 889 of the National Defense Authorization Act (NDAA) for fiscal year 2019, under any Contract or subcontract resulting from this Solicitation, Bidder or resultant Contractor or Subcontractor shall not provide to the State or Authorized User any equipment, system, or service that uses covered telecommunications equipment or services, as defined by the NDAA, as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception applies or the covered telecommunications equipment or services are covered by a waiver, as set forth in the NDAA and the rules and regulations promulgated thereunder.

6.41 Prevailing Wage Rates – Public Works and Building Services Contracts

Work being bid or a portion thereof may be subject to the prevailing wage rate provisions of New York State Labor Law. See "Prevailing Wage Rates - Public Works and Building Services Contracts" in Appendix B, OGS General Specifications. Any federal or State determination of a violation of any public works law or regulation, or labor law or regulation, or any OSHA violation deemed "serious or willful" may be grounds for a determination of vendor non-responsibility, rejection of Bid, suspension or termination of Contract.

For bidding purposes, the applicable Prevailing Wage Rate Schedule for this solicitation is **PRC#: 2024002974**

IMPORTANT NOTE: Authorized Users MUST obtain a separate PRC # for each purchase from this contract where prevailing wage rates apply. The PRC # provided in this Bid is for information and evaluation purposes only.

For access to the Department of Labor (DOL) Prevailing Wage Schedule, as well as for Prevailing Wage Updates, use the following DOL link: <https://dol.ny.gov/public-work-and-prevailing-wage>

Worker Notification

Labor Law § 220(3-a)(a)(ii) requires Contractors and subcontractors to provide written notice to all laborers, workers or mechanics of the *prevailing wage rate* for their particular job classification *on each pay stub*. It also requires Contractors and subcontractors to *post a notice* at the beginning of the performance of every public work Contract *on each job site* that includes the telephone number and address for the Department of Labor and a statement informing laborers, workers or mechanics of their right to contact the Department of Labor if he/she is not receiving the proper prevailing rate of wages and/or supplements for his/her particular job classification. The required notification will be provided with each wage schedule and may be downloaded from <https://dol.ny.gov/> or made available upon request by contacting the Bureau of Public Work at 518-457-5589. In the event that the required information will not fit on the pay stub, an accompanying sheet or attachment of the information will suffice.