



# Office of General Services Procurement Services

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## Invitation for Bids (Revised 03/05/2025)

<b>BID OPENING</b> <b>DATE:</b> March 13, 2025 <b>TIME:</b> 1:30 P.M. ET  <b>SOLICITATION NUMBER:</b> <b>23388</b>		<b>TITLE: Group 31503</b> <b>Bituminous Concrete Asphalt Mixtures</b> <b>(2025 VPP NYSDOT Specific Projects)</b> <b>(Federal &amp; State Funds)</b>  <b>Classification Codes: 30</b>	
<b>CONTRACT PERIOD:</b> Upon OSC Approval to December 31, 2025			
<b>DESIGNATED CONTACTS:</b> 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: <a href="mailto:Christine.Dettmer@ogs.ny.gov">Christine.Dettmer@ogs.ny.gov</a>			
Christine Dettmer Contract Management Specialist Telephone No.: (518) 473-9122 E-mail: <a href="mailto:Christine.Dettmer@ogs.ny.gov">Christine.Dettmer@ogs.ny.gov</a>	Jose DeAndres Team Leader Telephone No.: (518) 474-3024 E-mail: <a href="mailto:Jose.DeAndres@ogs.ny.gov">Jose.DeAndres@ogs.ny.gov</a>	Hasib Khan NYSDOT Telephone No.: (518) 457-1572 E-mail: <a href="mailto:Hasibul.Khan@dot.ny.gov">Hasibul.Khan@dot.ny.gov</a>	

<b>Bidder's Federal Tax Identification Number:</b> <i>(Do Not Use Social Security Number)</i>		<b>NYS Vendor Identification Number:</b> <i>(See New York State Vendor File Registration Clause)</i>	
Legal Business Name of Company Bidding:			
D/B/A – Doing Business As (if applicable):			
Street			
City		State	County
		Zip Code	
Email Address:		Company Web Site:	

If applicable, place an "x" in the appropriate box(es) *(check all that apply)*

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

WE ARE NOT BIDDING AT THIS TIME BECAUSE:

**OGS Use Only:** # of Binders/Packages: \_\_\_\_\_ # of USB Flash Drives \_\_\_\_\_ 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**

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Appendix B – *General Specifications* (April 2016)

Appendix C – *Federal Funding Agency Mandatory Terms and Conditions* (October 2023)

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Attachment 2 – *NYS Required Certifications*

Attachment 3 – *Encouraging Use of NYS Businesses in Contract Performance*

Attachment 4 – *Insurance Requirements*

Attachment 5 – *Bidder Information Questionnaire*

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Attachment 15 – *NYS Map – NYSDOT Regions*

Attachment 16 – *Group Specifications #947*

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## 1. INTRODUCTION

### 1.1 Overview

This Solicitation is issued by the New York State (“NYS”) Office of General Services (“OGS”), Procurement Services for Bituminous Concrete Asphalt Mixtures as specified herein for the NYS Department of Transportation (“NYSDOT”). Authorized User, as used within this Solicitation, shall be defined to mean the NYS Department of Transportation ONLY. This Solicitation is for specific NYSDOT projects ONLY, which are listed in Attachment 1 – Pricing.

There is to be one award for each project. Bidders may bid on one or more projects. For each project, award shall be made to the responsive and responsible Bidder with the lowest GRAND TOTAL submitting bids on all materials included in each project.

For information on other bidding opportunities, including centralized contracts for other State agencies or municipalities, vendors should please visit the OGS website or NYS Contract Reporter.

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 is for Bituminous Concrete Asphalt Mixtures to be used in preventative maintenance activities pursuant to specified NYSDOT projects.

Bituminous Concrete is a mixture of stone of various sizes and liquid material. The mixture is heated and proportioned in a bituminous concrete plant and compacted on a road in a heated state. Once the material cools, it becomes a hard, durable material. Bituminous concrete is used for roads, parking lots, tennis courts, sidewalks, bike paths, and for patching same.

See Attachment 1 – *Pricing* for the Asphalt Mix Items being included for each specific project within this Solicitation. Refer to Attachment 10 – *Special Notes – NYSDOT Specific Projects* Section 1.1 *Materials Descriptions* and Section 2.4 *Special Note – PG Binder and Mix Design* Level for each item’s description and/or specific requirements.

This Solicitation and ensuing contracts provide an avenue for preventive maintenance activities which ensure that highways and bridges meet or exceed their optimum useful life.

All scope changes are subject to the approval of the New York State Office of the State Comptroller as required by law.

### 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 102 million dollars 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 Site Visit**

Vendors intending to submit Bids should examine the sites of the projects and become fully knowledgeable of the quantities, character, location and other conditions affecting the work to be performed; including the existence of poles, wires, ducts, conduits, and other facilities and structures of municipal and other public service corporations on, over, or under the site. Vendors shall make no claims against the State for any loss or damage incurred due to vendors’ reliance upon any estimates, test or other representations made by an officer or agent of the State with respect to the work to be performed.

**1.5 Key Events/Dates**

<b>Event</b>	<b>Date</b>	<b>Time</b>
IFB Release	<i>2/19/2025 (tentative)</i>	N/A
Closing Date for Bidder Questions	<i>2/26/2025</i>	5:00 PM ET
OGS Procurement Services’ Responses to Bidder Questions	<i>3/03/2025 (tentative)</i>	N/A
Bid Opening / Due date for Bids	<i>3/13/2025</i>	1:30 PM ET
Contract Approval Date / Award Publish Date	<i>Upon OSC Approval</i>	N/A

**1.6 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.

### **1.7 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 [Christine.Dettmer@ogs.ny.gov](mailto:Christine.Dettmer@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.

### **1.8 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.

### **1.9 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 23388 MWBE or SDVOB INTEREST\_COMPANY NAME*” to [Christine.Dettmer@ogs.ny.gov](mailto:Christine.Dettmer@ogs.ny.gov) on or before March 13, 2025. The e-mail content should include:

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

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

### **1.10 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/>

### **1.11 Definitions**

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

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

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

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

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

**“NYS Vendor ID”** is a unique ten-character identifier issued by the NYS Office of the State Comptroller (OSC) when the vendor is registered on the Vendor File System.

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

**“Preferred Source Program”** shall refer to the special social and economic goals set by New York State in State Finance Law § 162 that require a governmental entity purchase select Products from designated organizations when the Products meet the “form, function and utility” requirements of the governmental entity. Under State Finance Law § 163, purchases of Products from Preferred Sources are given the highest priority and are exempt from the competitive bidding requirements. The New York State Preferred Sources include: The Correctional Industries Program of the Department of Corrections and Community Supervision (“Corcraft”); New York State Preferred Source Program for People Who Are Blind (“NYSPSP”); and the New York State Industries for the Disabled (“NYSID”). These requirements apply to a state agencies, political subdivisions and public benefit corporations (including most public authorities).

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

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

### **1.12 Appendices and Attachments**

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

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

Appendix B – *General Specifications* (April 2016)

Appendix C – *Federal Funding Agency Mandatory Terms and Conditions* (October 2023)

Attachment 1 – *Pricing*

Attachment 2 – *NYS Required Certifications*

Attachment 3 – *Encouraging Use of NYS Businesses in Contract Performance*

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 – *Special Notes – NYSDOT Specific Projects*

Attachment 11 – *Detailed Specifications*

Attachment 12 – *Superpave Asphalt Mixtures Tables*

Attachment 13 – *Group Specifications #950*

Attachment 14 – *Federal Aid Project Requirements (Chapter 12 – Appendix 12-1)*

Attachment 15 – *NYS Map – NYSDOT Regions*

Attachment 16 – *Group Specifications #947*

Attachment 17 – *NYSDOT Work Zone Traffic Control*

### **1.13 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* (June 2023);
2. Appendix C – *Federal Funding Agency Mandatory Terms and Conditions* (October 2023);
3. The Solicitation;
4. Appendix B – *General Specifications* (April 2016);
5. All other appendices and attachments to the Solicitation.

## **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. A Bidder shall meet the following qualifications:

Bidder must have the capability to produce at or purchase from a NYSDOT-approved bituminous mixing plant, all required materials meeting the requirements outlined in Section 401 of the New York State Department of Transportation, Standard Specifications with the effective date of January 1, 2025, and all current addenda at the time of the Bid opening, under any contract awarded under this Solicitation. Bidder shall affirm such capability by answering question #21 on Attachment 5 – Bidder Information Questionnaire.

All contractors submitting bids on public work projects are required to register with the New York State Department of Labor (NYSDOL) under Labor Law Section 220-i. The registration number must be entered in the space provided on Attachment 5 – Bidder Information Questionnaire. Failure to provide a valid and verifiable registration number from the NYSDOL Registry at the time of bid submission may result in disqualification of the bid.

### **3. SPECIFICATIONS**

#### **3.1 NYSDOT Standard Specifications**

New York State Department of Transportation, Standard Specifications with the effective date of January 1, 2025, and all current addenda at the time of the Bid opening including all updates made through EI 20-016 are hereby expressly made a part of this Bid document as fully as if set forth at length herein and shall govern any situations not covered by this Bid Document, Attachment 14 – *Federal Aid Project Requirements (Chapter 12 – Appendix 12-1)*, or Appendix B including, but not limited to, provisions relative to "Buy America," "Stopping Work," "Dispute Resolution and Disputed Work," "Damages," "Extension of Time," "Extra Work, Force Account Work, Dispute Compensation and Recordkeeping," "Time Related Dispute Compensation," and "Changed Conditions and Delay Provisions." The referenced provisions supplement the Bid Document, Attachment 14 – *Federal Aid Project Requirements (Chapter 12 – Appendix 12-1)*, and Appendix B establishing specific standardized parameters for contract administration and project management by NYSDOT. A copy may be obtained at the following link:

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

#### **3.2 Group Specifications**

Group Specifications for each material item included in this Solicitation are set forth in the Attachment 13 – *Group Specifications #950* and Attachment 16 – *Group Specifications #947*. Bidder shall comply with the specifications set forth in those Attachments.

## 4. BID SUBMISSION

### 4.1 Performance and Bid Bonds

Please refer to Attachment 10 - *Special Notes – NYSDOT Specific Projects*, Section 1.11 - *Contract Bonds* for labor and material bond requirements.

### 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](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. A complete Bid consists of submission of the following documents. 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. See also Attachment 6 – *Bidder Submission Checklist*.

	<b>Bid Document</b>	<b>Required File Format (Submit on USB)</b>	<b>Original also Required (Submit paper original)</b>
1	<b>Page 1</b> of the Solicitation	PDF	<b>X</b>
2	<b>Page 2</b> of the Solicitation – <i>Bidder Certification and Affirmation</i> , with signature	PDF	<b>X</b>
3	<b>Bid Solicitation Update(s)</b> (if applicable) with signature	PDF	<b>X</b>
4	<b>Appendix C – Federal Funding Agency Mandatory Terms and Conditions</b> , with Section 10 completed (page 6)	PDF	
5	<b>Attachment 1 – Pricing</b> – these price pages must be saved to the flash drives in Microsoft Excel format and should also be provided as a hard copy PDF. The Attachment 1 must be sent as part of the Bid proposal before the Bid Opening / Due Date for Bids	Excel	<b>X</b>
6	<b>Attachment 2 – NYS Required Certifications</b> , with signature	PDF	
7	<b>Attachment 3 – Encouraging Use of NYS Businesses in Contract Performance</b>	PDF	
8	<b>Proof of Compliance with Attachment 4 – Insurance Requirements</b>	PDF	
9	<b>Attachment 5 – Bidder Information Questionnaire</b> – Be sure to complete <b>New Ownership &amp; Officials Tab</b> located at bottom of worksheet	Excel	
10	<b>Attachment 6 – Bidder Submission Checklist</b>	Not required to be submitted with the bid	
11	<b>Attachment 7 – Bidder Questions Form</b>	Not required to be submitted with the bid	
12	<b>Attachment 8 – Report of Contract Usage</b>	Not required to be submitted with the bid	
13	<b>Attachment 9 – Certification Under Executive Order 16</b> , with signature	PDF	
14	<b>Attachment 10 – Special Notes - NYSDOT Specific Projects</b>	Not required to be submitted with the bid	

	Bid Document	Required File Format (Submit on USB)	Original also Required (Submit paper original)
15	<b>Attachment 11 – Detailed Specifications</b>		Not required to be submitted with the bid
16	<b>Attachment 12 – Superpave Asphalt Mixtures Tables</b>		Not required to be submitted with the bid
17	<b>Attachment 13 – Group Specifications #950</b>		Not required to be submitted with the bid
18	<b>Attachment 14 – Federal Aid Project Requirements (Chapter 12 - Appendix 12-1)</b> – Pages 9-10 and 13-17 of this attachment (if the projects that are being bid are Federal Funded projects) (PDF), please refer to Attachment 10 – Special Notes NYSDOT Specific Projects, for project listings and their funding);	PDF	
19	<b>Attachment 15 – NYS Map – NYSDOT Regions</b>		Not required to be submitted with the bid
20	<b>Attachment 16 – Group Specifications #947</b>		Not required to be submitted with the bid
21	<b>Attachment 17 – NYSDOT Work Zone Traffic Control</b>		Not required to be submitted with the bid
22	<b>EEO 100 – Equal Employment Opportunity Staffing Plan</b> , with signature (see <a href="https://ogs.ny.gov/mwbe/forms">https://ogs.ny.gov/mwbe/forms</a> under “Commodity & Service Contracts”);	PDF	
23	<b>Vendor Responsibility Questionnaire</b> (copy of certification that a Questionnaire has been completed online, and certified no more than six (6) months prior to the bid opening date; see <a href="https://www.osc.state.ny.us/state-vendors/vendrep/file-your-vendor-responsibility-questionnaire">https://www.osc.state.ny.us/state-vendors/vendrep/file-your-vendor-responsibility-questionnaire</a> )	PDF	
24	<b>ST-220-CA, Contractor Certification to Covered Agency</b> , with signature and notary (see <a href="https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf">https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf</a> )	PDF	
25	<b>ST-220-TD, Contractor Certification</b> , with signature and notary (see <a href="https://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf">https://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf</a> )		Must be submitted directly to the NYS Tax Department

- B. 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 hard copy (PDF) of pages 1 and 2 of the Solicitation and Attachment 1 - Pricing with the Bid (see 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>).

- C. OGS shall consider documents submitted on multiple USB flash drives to be equal, provided that the date/time modified is the same for documents that have the same file name. In the case of discrepancies between file names and date/time modified, the file with the most recent date/time modified shall take precedence.
- D. Documents that are not indicated as “Original Also Required” in the above table should not be submitted in paper format, and may not be reviewed by OGS if they are received. In the case of discrepancies between paper versions that are received (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 version.
- E. 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.

**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 (23388)
- 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 and 2 of the Solicitation, completed with the Bidder’s information, and Attachment 1 - *Pricing*. These printed copies 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 1.5 *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 – Solicitation/IFB 23388

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 – Section 4.7 below.

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

#### **4.14 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.

#### 4.15 Price

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

Price quoted shall be net per ton, furnished, delivered, dumped into approved spreading machines, placed, and compacted totally by the Contractor. The existing bituminous concrete surface (and any surfaces included in this contract that will be overlaid by this contract) shall be treated with tack coat.

**Tack Coat (Item 407.01040009) shall be paid under its own item.** The price quoted for the tack coat shall include furnishing, delivering, and applying the tack coat as indicated. Price adjustments, if any, will be calculated based on the material actually furnished.

The vendor is to furnish all necessary labor and equipment to complete the indicated projects except that the State will supervise and control the operation. Permanent pavement striping will be the responsibility of the State upon completion of the paving after the vendor has vacated each project site. The equipment supplied to place the asphalt mixture shall meet the requirements of Section 404 of the New York State Department of Transportation Standard Specifications. The equipment supplied to place the tack coat shall meet the requirements of Section 407 of the New York State Department of Transportation Standard Specifications.

Asphalt pavers shall meet the requirements of Sub-Section 404-3.02, Hot Mix Pavers, of the New York Department of Transportation Standard Specifications. Compaction equipment shall meet the requirements of Sub-Section 404-3.04, Rollers of the Specification. All necessary operators shall be supplied along with the asphalt paver, rollers, and distributor.

The approved asphalt pavers shall be capable of simultaneously paving the travel lanes and the shoulders as indicated in the *Project Dimensions* tab of Attachment 12 – *Superpave Asphalt Mixtures Tables*. All personnel supplied for the paving shall be qualified and experienced in asphalt paving.

Price bid shall include all required insurance coverage costs.

## **5. METHOD OF AWARD**

### **5.1 Method of Award**

The State shall make one award for each project listed within Attachment 1 - *Pricing*. Bidders may bid on one or more projects. Bidders are not required to bid on all the projects.

Award shall be made by GRAND TOTAL (defined as total cost per project) for each project to the lowest responsive and responsible bidder submitting bids on all materials included in each project.

The State reserves the right to reject an obviously unbalanced Bid for an individual project or to make "NO AWARD" on an individual project if individual Bid prices for a project are deemed to be unbalanced or excessive or if an error in the Solicitation becomes evident. The determination of an unbalanced Bid shall be at the sole discretion of the State.

### **5.2 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.

## 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 on the date of OSC approval of the final executed contract documents and the Contract term shall end on December 31, 2025.
- B. Extensions. At the State's option, the Contract may be extended for an additional period of two (2) years, in increments as deemed to be in the best interest of the State. Whether the optional extension is exercised is at the sole discretion of the State. A Contractor shall retain the right to decline a Contract extension offered under this section. Any Contract extension will be under the same terms and conditions, subject to the approval of OSC and any additional applicable statutory and policy requirements. Any extensions provided under this section shall apply in addition to any rights set forth in Appendix B *Contract Term – Extension*.
- C. The Contract term provided for in this section shall extend 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 that OGS determines that a short term extension is in the best interest of the State, (e.g., a replacement Contract has not been issued, or an extended period is needed for Authorized Users to transition to another procurement method), 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 previously 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, unless otherwise noted in the extension notification or agreement, this extension automatically terminates should a replacement Contract be issued in the interim.

### 6.3 Asphalt Price Adjustment

#### 6.3.1 General

- a. Asphalt price adjustments allowed will be based on the February 2025 average of the F.O.B. terminal price per ton of unmodified PG 64S-22 binder without anti-stripping agent (base average F.O.B. terminal price) for the asphalt mix and tack coat.

**The February 2025 average is \$598.000.**

The new monthly average terminal price will be determined by the New York State Department of Transportation based on prices of pre-approved primary sources of performance graded binder in accordance with the New York State Department of Transportation Standard Specification.

**NOTE:** The same grade of asphalt cement used in establishing the base average F.O.B. terminal price shall be used in establishing the new average F.O.B. terminal price.

In the event that one or more of the New York State Department of Transportation pre-approved sources discontinue posting a price for asphalt cement, the base average F.O.B. terminal **price shall not be recalculated.**

- b. The new average F.O.B. terminal price will be determined based on the above F.O.B. terminal prices posted each month, hereafter known as the “Adjustment Date”, during the contract period. However, asphalt price adjustments, in accordance with the formula below, will be effective for deliveries made on and after the first of the month following the adjustment date.
- c. The unit prices per ton of asphalt mixture and per gallon of tack coat purchased from any award based on this specification will be subject to adjustment based on the following formula:

**Asphalt Mixture**

$$\text{Price Adjustment (per ton)} = \left( \frac{\text{New Monthly Average FOB Terminal Price} - \text{Base Average FOB Terminal Price}}{235} \right) \times \text{Total \% Asphalt Plus Fuel Allowance}$$

**Tack Coat**

$$\text{Price Adjustment (per gallon)} = \left( \frac{\text{New Monthly Average FOB Terminal Price} - \text{Base Average FOB Terminal Price}}{235} \right) \times \text{Total \% Asphalt Plus Fuel Allowance}$$

Positive Price Adjustment number shall be added to original per ton/gallon Bid Price.

Negative Price Adjustment number shall be subtracted from original per ton/gallon Bid Price.

**New Monthly Average F.O.B. Terminal Price**

The average F.O.B. terminal price for unmodified PG 64S-22 binder without anti-stripping agent is as determined by the New York State Department of Transportation per New York State Department of Transportation Standard Specification.

**Base Average F.O.B. Terminal Price**

The average F.O.B. terminal price of unmodified PG 64S-22 binder without anti-stripping agent is as determined by the New York State Department of Transportation as of February 2025.

**Total % Asphalt plus Fuel**

The percentage of total allowable asphalt and fuel for each item is as follows:

Material Designation	Asphalt %	+Fuel Allowance %	Total % Asphalt Plus Fuel
404.017901	****	1	****
404.018901	****	1	****
404.058901	8.25	1	9.25%
404.068X01	6.70	1	7.70%
404.09XX01	6.20	1	7.20%
404.12XX01	5.50	1	6.50%
404.19XX01	4.90	1	5.90%
406.09XX0108	6.20	1	7.20%
407.0102 – Diluted Tack Coat	40.00	0.2	40.20%
407.0103 – Straight Tack Coat	55.00	0.2	55.20%
407.01040009 – non-Tracking Tack Coat	50.00	0.2	50.20%

\*\*\*\*The conversion factor for Truing & Leveling will be computed separately using the conversion factors for the individual mixtures used.

**+Fuel Allowance represents allowance for energy (fuel, electricity, natural gas) used in the production of asphalt. It is a cost associated with the product and not intended to represent any trucking or hauling of product.**

- d. Work performed after the expiration of the contract, where no extension has been granted, resultant from purchase orders placed prior to expiration of the contract will be based on the new average for the month in which the work is done applying the same base established for that contract.

Asphalt Price Adjustments for any contracts that are extended will be based on the new average for the month in which the work is done applying the same base established for that contract.

- e. Asphalt price adjustments allowed by this contract shall be calculated and applied to the original prices. There will not be asphalt price adjustments unless the change amounts to more than \$0.10 per ton from the original price for the asphalt mix and \$0.0170 per gallon for the tack coat. In these instances, prices will revert back to the original prices.
- f. All asphalt price adjustments will be computed to three decimal places.
- g. Should these provisions result in a price structure which becomes unworkable, detrimental or injurious to the State or in prices which are not truly reflective of market conditions or which are deemed by the Commissioner to be unreasonable or excessive, and no adjustment in price is mutually agreeable, the Commissioner reserves the sole right upon ten days written notice mailed to the Contractor to terminate any contract resulting from this bid opening.
- h. All asphalt price adjustments shall be published by the State and issued to all contract holders whose responsibility will be to attach the appropriate State notification (based on when the work was performed) to the payment invoice submitted to agency.

**6.3.2 Asphalt Price Adjustment for Asphalt Mixtures: Example**

**Example of Positive Price Adjustment – Asphalt Mixtures**

This example is for illustration purposes only. Actual Base Average Price, etc., may vary:

Item 404.09XX01

Item 404.09XX01 Bid Price = \$70.000 (example)

Base Average F.O.B Terminal Price = \$598.000 (fixed for the duration of the contract)

New Monthly Average F.O.B. Terminal Price = \$608.000 (example, it changes each month)

Total % Asphalt plus Fuel for Item 404.09XX01 = 7.20% (see Total % Asphalt + Fuel Allowance Chart)

Monthly Price Adjustment for Item 404.09XX01 (example):

Price Adjustment	=	$\left( \begin{array}{c} \text{New Monthly} \\ \text{Average F.O.B.} \\ \text{Terminal Price} \end{array} - \begin{array}{c} \text{Base Average} \\ \text{F.O.B.} \\ \text{Terminal Price} \end{array} \right) \times$	Total % Asphalt (Per Ton) Plus Fuel Allowance
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$(\$608.000 - \$598.000) = \$10.000 \times 0.072 = \mathbf{+\$0.720 \text{ per ton}}$

Positive Price Adjustment number shall be added to original per ton Bid Price.

Contract price for Item 404.09XX01 including the new Price Adjustment for that month (example):

Contract Price = Bid Price + Monthly Price Adjustment

Contract Price = \$70.000 + \$0.720 = **\$70.720 per ton**

**Example of Negative Price Adjustment- Asphalt Mixtures**

This example is for illustration purposes only. Actual Base Average Price, etc., may vary:

Item 404.09XX01

Item 404.09XX01 Bid Price = \$70.000 (example)

Base Average F.O.B. Terminal Price = \$598.000 (fixed for the duration of the contract)

New Monthly Average F.O.B. Terminal Price = \$588.000 (example, it changes each month)

Total % Asphalt plus Fuel for Item 404.09XX01 = 7.20% (see Total % Asphalt + Fuel Allowance Chart)

Monthly Price Adjustment for Item 404.09XX01 (example):

$\text{Price Adjustment} = \left( \begin{array}{l} \text{New Monthly} \\ \text{Average F.O.B.} \\ \text{Terminal Price} \end{array} - \begin{array}{l} \text{Base Average F.O.B.} \\ \text{Terminal Price} \end{array} \right) \times \begin{array}{l} \text{Total \% Asphalt} \\ \text{(Per Ton)} \\ \text{Plus Fuel Allowance} \end{array}$
$(\$588.000 - \$598.000) = -\$10.000 \times 0.0720 = \textbf{-\$0.720 per ton}$

Negative Price Adjustment number shall be subtracted from original per ton Bid Price.

Contract price for Item 404.09XX01 including the new Price Adjustment for that month (example):

Contract Price = Bid Price – Monthly Price Adjustment

Contract Price = \$70.000 - \$0.720 = **\$69.280 per ton**

**6.3.3 Asphalt Price Adjustment for Tack Coat: Example**

**(Example of Positive Price Adjustment – Tack Coat)**

This example is for illustration purposes only. Actual Base Average Price, etc., may vary:

Item 407.0102 Diluted Tack Coat

Item 407.0102 Bid Price = \$2.000 (example)

Base Average F.O.B. Terminal Price = \$598.000 (fixed for the duration of the contract)

New Monthly Average F.O.B. Terminal Price = \$608.000 (example, it changes each month)

Total % Asphalt plus Fuel for Item 407.0102 = 40.20% (see Total % Asphalt + Fuel Allowance Chart)

Monthly Price Adjustment for Item 407.0102 Diluted Tack Coat (example):

**Tack Coat**

Price Adjustment (per gallon)	=	$\left( \frac{\text{New Monthly Average FOB Terminal Price} - \text{Base Average FOB Terminal Price}}{235} \right)$	X	Total % Asphalt Plus Fuel Allowance
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$(\$608.000 - \$598.000) = (\$10.000 / 235) \times 0.402 = \mathbf{+\$0.017 \text{ per gallon}}$

Positive Price Adjustment number shall be added to original per ton Bid Price.

Contract price for Item 407.0102 Diluted Tack Coat including the new Price Adjustment for that month (example):

Contract Price = Bid Price + Monthly Price Adjustment

Contract Price = \$2.000 + \$0.017 = **\$2.017 per gallon**

**(Example of Negative Price Adjustment- Tack Coat)**

This example is for illustration purposes only. Actual Base Average Price, etc., may vary:

Item 407.0102 Diluted Tack Coat

Item 407.0102 Bid Price = \$2.000 (example)

Base Average F.O.B. Terminal Price = \$598.000 (fixed for the duration of the contract)

New Monthly Average F.O.B Terminal Price = \$588.000(example, it changes each month)

Total % Asphalt plus Fuel for Item 407.0102 = 40.20% (see Total % Asphalt + Fuel Allowance Chart)

Monthly Price Adjustment for Item 407.0102 Diluted Tack Coat (example):

**Tack Coat**

Price Adjustment (per gallon)	=	$\left( \frac{\text{New Monthly Average FOB Terminal Price} - \text{Base Average FOB Terminal Price}}{235} \right)$	X	Total % Asphalt Plus Fuel Allowance
-------------------------------	---	---	---	-------------------------------------

$(\$588.000 - \$598.000) = (-\$10.000 / 235) \times 0.402 = \mathbf{-\$0.017 \text{ per gallon}}$

Negative Price Adjustment number shall be subtracted from original per ton Bid Price.

Contract price for Item 407.0102 including the new Price Adjustment for that month (example):

Contract Price = Bid Price – Monthly Price Adjustment

Contract Price = \$2.000 - \$0.017 = **\$1.983 per gallon**

#### 6.4 Prevailing Wage Rates – Public Works and Building Services Contracts

Work being bid is 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.

Any provisions of NYS Labor Law that are in conflict with mandatory Federal-Aid construction contract compliance requirements are superseded. Any provisions of NYS Labor Law that are not in conflict with mandatory Federal-Aid construction contract compliance requirements or the Davis-Bacon Act but are more restrictive shall apply.

**IMPORTANT NOTE: Authorized Users MUST obtain a separate PRC # for each purchase from this contract where prevailing wage rates apply.**

For access to the Department of Labor (DOL) Prevailing Wage Schedule, use the following link:

[NYSDOL - Prevailing Wage](#)

For Prevailing Wage Updates, use the following DOL link:

[NYSDOL - Prevailing Wage](#)

Links to schedule updates appear in the table at the bottom of the web page.

The Federal Wage Rate Charts are located on the web at: <http://www.sam.gov/content/wage-determinations>. To retrieve the Federal Wage Rate Charts, referring to the next page's tables, enter the applicable WD# in the "Select DBA by number" field on the web page and click "Search".

##### 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.

##### Public Work Contractor and Subcontractor Registry

All contractors submitting bids on public work projects are required to register with the New York State Department of Labor (NYSDOL) under Labor Law Section 220-i. The registration number must be entered in the space provided on Attachment 5 – Bidder Information Questionnaire. Failure to provide a valid and verifiable registration number from the NYSDOL Registry at the time of bid submission may result in disqualification of the bid.

##### OSHA 10-Hour Construction Safety and Health Course

Labor Law § 220-h requires that on all public work contracts of at least \$250,000, all laborers, workers, and mechanics working on site be certified as having successfully completed the OSHA 10-hour construction safety and health course. It further requires that the advertised Bids and contracts for every public work contract of at least \$250,000 contain a provision of the requirement AND only applies to workers on a public work project that are required under Article 8 to receive the prevailing wage.

Further information may be found at: <https://dol.ny.gov/workforce-protections>.

##### Living Wage

An Authorized User subject to a local law establishing a "living wage," such as Section 6-109 of the New York City Administrative Code, is required to ensure the Contractor sought to be hired complies with such local law. If the pay rate(s) for a job title(s) is less than the local law "living wage," then the Authorized User subject to such local law cannot use this Contract for such job title(s). Local laws, however, are not a term and condition of the OGS contract.

COUNTY	WD #		COUNTY	WD #		COUNTY	WD #
Albany	NY2		Herkimer	NY31		Richmond	NY3
Allegany	NY47		Jefferson	NY9		Rockland	NY20
Bronx	NY3		Kings	NY3		Saratoga	NY2
Broome	NY4		Lewis	NY9		Schenectady	NY2
Cattaraugus	NY8		Livingston	NY30		Schoharie	NY2
Cayuga	NY36		Madison	NY15		Schuyler	NY5
Chautauqua	NY8		Monroe	NY10		Seneca	NY40
Chemung	NY5		Montgomery	NY2		St Lawrence	NY9
Chenango	NY4		Nassau	NY12		Steuben	NY18
Clinton	NY6		New York	NY3		Suffolk	NY12
Columbia	NY2		Niagara	NY11		Sullivan	NY7
Cortland	NY42		Oneida	NY14		Tioga	NY45
Delaware	NY21		Onondaga	NY16		Tompkins	NY24
Dutchess	NY7		Ontario	NY32		Ulster	NY7
Erie	NY8		Orange	NY7		Warren	NY39
Essex	NY6		Orleans	NY34		Washington	NY2
Franklin	NY35		Oswego	NY38		Wayne	NY44
Fulton	NY2		Otsego	NY37		Westchester	NY17
Genesee	NY29		Putnam	NY25		Wyoming	NY41
Greene	NY2		Queens	NY3		Yates	NY33
Hamilton	NY46		Rensselaer	NY2			

**6.5 N.Y. State Labor Law § 220-i**

All contractors and subcontractors submitting bids or performing construction, demolition, reconstruction, excavation, rehabilitation, repair, installation, renovation, alteration, or custom fabrication work on public work projects or private projects for Authorized User projects covered by Article 8 of the Labor Law are required to register with the New York State Department of Labor under Labor Law Section 220-i.

Labor Law Section 220-i (6) prohibits contractors from bidding on public work and subcontractors from commencing work unless the contractor or subcontractor is registered with NYSDOL. This section requires contractors to submit their Certificate of Registration with their bid materials. Contractors are required to provide proof of registration as required by Labor Law Section 220-i as a minimum qualification and that failure to provide proof of registration will disqualify a bidder. Subcontractors must be registered as required by Labor Law Section 220-i before commencing work on a covered project.

Any Contractor offering services under their Contract that involve the performance of work that is covered by Article 8 of the Labor Law must obtain and maintain an active valid Certificate of Registration for the duration of the Contract Term. Any Contractor that must obtain and retain a Certificate of Registration under this section that is using any subcontractors to provide a service covered by Article 8 of the Labor Law under this Contract must require all subcontractor(s) to register with NYSDOL and obtain a Certificate of Registration before commencing work on a covered project; and any such subcontractor must maintain their active valid contractor registration for the duration of the Contract Term.

Contractor must provide the unique registration number found on their Certificate of Registration, as well as any Subcontractor(s)' unique registration number(s) found on their Certificate of Registration to the Authorized User in accordance with the requirements of the Labor Law and the How to Use procedures of this Contract.

## **6.6 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.

## **6.7 Ordering**

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

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

## **6.8 Minimum Order**

There is no minimum order for this Contract.

## **6.9 Invoicing and Payment**

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

Payment shall be made at contract prices per net ton for the actual quantity of material placed by the Contractor. Payment shall be made at the contract price per gallon for the actual quantity of tack coat placed by the Contractor.

## **Quality Adjustment Factor (QAF; Quality Units)**

Payment adjustments will be applied in Quality Units for all applicable mixes as described in Sub-Section 401-3, 404-4, and 404-5 of the NYSDOT Standard Specifications <https://www.dot.ny.gov/main/business-center/engineering/specifications/updated-standard-specifications-us>. Please refer to that document for a more detailed explanation. The following Index Prices shall be used for all projects contained in this contract:

<b>QUALITY UNIT INDEX PRICES (QAF)</b>	
<b><u>Region</u></b>	<b><u>Index Price (\$/Quality Unit)</u></b>
1	\$85
2	\$90
3	\$90
4	\$95
5	\$100
6	\$90
7	\$80
8	\$120
9	\$90
10	\$125
11	\$140

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>.

**6.10 Product Delivery**

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

### 6.11 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.

### 6.12 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/>.

### 6.13 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-orkplace/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.

### 6.14 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*.

**The Contractor must supply proof of Owners and Contractors Protective (OCP) Insurance Coverage, with a limit of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, to the Resident Engineer at the Pre-Paving Conference.**

### 6.15 Report of Contract Usage

Contractor shall submit Attachment 8 – Report of Contract Usage including total sales to Authorized Users of this Contract by Contractor, and all authorized resellers, dealers and distributors, if any, no later than 30 days after the end of this contract.

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

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

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

### 6.16 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

The requirements set forth in this Section do not apply to projects within the scope of this Invitation for Bids (IFB) that are federally funded. Federally funded projects are governed by 49 CFR 26 titled: *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. (A list of federally funded projects included in this IFB can be found in Attachment 10 – *Special Notes NYSDOT Specific Projects*, Section 2.1.)

Bidders shall refer to Attachment 14 – *Federal Aid Project Requirements (Chapter 12 – Appendix 12-1)* for additional guidance on the DBE Utilization and Equal Employment Opportunity requirements applicable to all federally funded projects.

#### 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.

### **6.17 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](mailto:VeteranDevelopment@ogs.ny.gov) to discuss methods of maximizing participation by SDVOBs on the Contract.

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

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

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

## **6.19 Environmental Sustainability and NYS Executive Order Number 22**

New York State is committed to environmental sustainability, and seeks to minimize the environmental impact of any Products that the State Procures. Executive Order No. 22 *Leading By Example: Directing State Agencies to Adopt a Sustainability and Decarbonization Program* (“EO 22”), requires State Agencies, authorities, and public benefit corporations (“Affected Entities”) to follow GreenNY procurement specifications for commodities, services and technology. The GreenNY specifications consider a wide range of factors including avoidance of toxic substances, pollution reduction and prevention, sustainable manufacturing, reduction of greenhouse gas emissions, packaging, and water conservation. Resources are available on the OGS website at <https://ogs.ny.gov/greenny-purchasing-requirements-and-tools> for procurement managers and Contractors to learn about which Contracts provide environmentally preferable Products.

A list of currently approved specifications is located on the OGS website at <https://ogs.ny.gov/greenny/approved-greenny-specifications>.

## **6.20 Consumer Products Containing Mercury**

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

## **6.21 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.

## **6.22 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.

### 6.23 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](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.

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

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

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

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

## **6.25 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.

## **6.26 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.

## **6.27 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.

## **6.28 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.