NEW YORK STATE | Office of General Services
Procurement Services

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

# Invitation for Bids (Revised July 10, 2026)

| | |
|---|---|
| **BID OPENING**<br>**DATE:** July 22, 2026<br>**TIME:** 1:30 P.M. ET<br>**SOLICITATION NUMBER:**<br>**23449** | **TITLE: Group 01800 –**<br>**Road Salt and Treated Salt – Types 1 & 2 (Statewide)**<br><br>**Classification Code:12** |
| **CONTRACT PERIOD:** | **September 1, 2026 (or upon the date approved by OSC, whichever is later) through August 31, 2027** |

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

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

| | |
|---|---|
| Jamison Tamer<br>Contract Management Specialist 1<br>Phone: (518) 473-2663 | Brandy Alden<br>Contract Management Specialist 2<br>Phone: (518) 408-1140 |

| | |
|---|---|
| **Bidder's Federal Tax Identification Number:**<br>*(Do Not Use Social Security Number)* | **NYS Vendor Identification Number:**<br>*(See New York State Vendor File Registration Clause)* |
| 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)*

| | | | |
|---|---|---|---|
| ☐ NYS Small Business<br># Employees | ☐ Service-Disabled Veteran Owned Business | ☐ NYS Minority Owned Business | ☐ NYS Women Owned Business |

If you are not bidding, place an "x" in the box and return this page only.
☐ WE ARE NOT BIDDING AT THIS TIME BECAUSE:

**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 ninety (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 Solicitation.

2. The Bidder can and will provide and make available, at a minimum, the Products, deliverables and/or services as described in the Solicitation.

3. The Bidder has read and understands the provisions of the Solicitation, 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 A – *Standard Clauses for New York State Contracts* (June 2023)
Appendix B – *General Specifications* (April 2016)
Appendix C – *Federal Funding Agency Mandatory Terms and Conditions* (October 2023)

## ATTACHMENTS

Attachment 1 – *Pricing*
Attachment 2 – *NYS Required Certifications*
Attachment 3 – *Encouraging Use of New York State 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 – *Road & Treated Salt Specifications*
Attachment 11 – *Bidder Certified Product Data Sheet*
Attachment 12 – *Delivery Schedule*
Attachment 13 – *Supplier/Manufacturer's Certificate*
Attachment 14 – *Bidder Certification of Provision of Product*

# 1. INTRODUCTION

## 1.1 Overview

This Solicitation is issued by the New York State ("NYS") Office of General Services ("OGS"), Procurement Services for Road Salt and Treated Salt (Types 1 & 2) as specified herein for all Authorized Users eligible to make purchases under the Contracts resulting from this Solicitation.

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

## 1.2 Scope

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

State and eligible non-State agencies may participate and become Authorized Users of the resulting Contract awards. Authorized User shall have the meaning set forth in State Finance Law Section 163(1)(k) and includes, but is not limited to, New York State Agencies, political subdivisions, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations.

This Solicitation includes the Lots identified below:

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

## 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 $240,000,000 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. 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 that demand will continue in any manner consistent with previous purchases.
- The individual value of each Contract is indeterminate and will depend upon actual Authorized User demand and actual quantities ordered during the Contract period.
- The State reserves the right to terminate any Contract for cause or convenience prior to the end of the term pursuant to the terms and conditions of the Contract.
- Contract pricing that is lower than anticipated could result in a higher quantity of purchases by Authorized Users than anticipated.
- Contract pricing that is higher than anticipated could result in a lower quantity of purchases by Authorized Users than anticipated.

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

## 1.4 Key Events/Dates

| Event | Date | Time |
|---|---|---|
| Solicitation Release | June 22, 2026 *(tentative)* | N/A |
| Closing Date for First Round of Bidder Questions | July 6, 2026 | 5:00 PM ET |
| OGS Procurement Services' Responses to First Round of Bidder Questions | July 13, 2026 *(tentative)* | N/A |
| Bid Opening / Due date for Bids | July 22, 2026 | 1:30 PM ET |
| Contract Approval Date / Award Publish Date | Sept 1, 2026, or "Upon OSC Approval" | N/A |

## 1.5 NYS Contract Reporter

Bidders must register with the New York State Contract Reporter ("NYSCR") at https://www.nyscr.ny.gov to receive notifications about this Solicitation. Navigate to the "Find Contracts" page to register for your free account, create an Opportunity Profile, and select Category/Classifications matching your business interests. Select "Turn on e-Alert notifications" to receive an email notification when a Solicitation is issued matching your selected Category/Classifications, and to receive email updates regarding selected ads. In order to receive email notifications regarding updates to the content or status of a particular ad, you must view the ad and then select "Notify me if this ad updates" on the right-hand side of the ad. Bidders also have the option to bookmark ads for future reference by selecting "Bookmark this ad" when viewing an ad.

**If you do not opt-in to receive e-Alert notifications and select "Notify me if this ad updates" on a particular ad, you will not receive email notifications regarding updates for the ad. This includes email notifications regarding the posting of the question-and-answer document and updated Solicitation documents**.

## 1.6 Bidder Questions

All questions regarding this Solicitation should be submitted using Attachment 7 – *Bidder Questions Form*, citing the applicable Solicitation document name and document section. The completed form must be emailed to OGS.sm.SST_roadsalt@ogs.ny.gov by the date and time indicated in the *Key Events/Dates* section. A Bidder is strongly encouraged to submit questions as soon as possible. Questions submitted after the deadline indicated may not be answered. OGS reserves the right but is not required to issue responses to late inquiries.

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. Any updates to Solicitation documents will also be posted to the OGS website. Notification of these postings will be included in the NYS Contract Reporter ad for the Solicitation (See 1.5 *NYS Contract Reporter*). 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 and rejected from consideration.

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

## 1.7 NYS Comptroller Approval

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

## 1.8 MWBE & SDVOB Interest in Partnering with Bidders

If a New York State certified MWBE or SDVOB would like to indicate its interest in working with participating Bidders, please send an email entitled "*Solicitation 23449 MWBE or SDVOB INTEREST_COMPANY NAME*" to OGS.sm.SST_roadsalt@ogs.ny.gov on or before the bid opening.

The email content should include:

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

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

## 1.9 Summary Of Policy and Prohibitions on Procurement Lobbying

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

## 1.10 Definitions

Capitalized terms used in this Solicitation and the resultant Contract(s) 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(s)**" 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**" shall refer 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**" shall refer to a unique ten-character identifier issued by the NYS Office of the State Comptroller (OSC) when the vendor is registered on the Vendor File System.

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

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

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

## 1.11 Appendices and Attachments

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

Appendix A – *Standard Clauses for New York State 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 New York State 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 – Road & Treated Salt Specifications*
*Attachment 11 – Bidder Certified Product Data Sheet*
*Attachment 12 – Delivery Schedule*
*Attachment 13 – Supplier/Manufacturer's Certificate*
*Attachment 14 – Bidder Certification of Provision of Product*

### 1.12 Conflict of Terms

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

1. Appendix A – *Standard Clauses for New York State Contracts* (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:

1. A Bidder intending to participate in this Solicitation must guarantee that it has an adequate source of supply from Supplier/Manufacturer (if the Bidder does not own its own mine) and that the Supplier/Manufacturer has agreed to supply the Bidder with all quantities of Products required by the Bidder in fulfillment of its obligations under the resultant Contract. See Section 4.10 - *Supplier/Manufacturer's Certificate*.
2. Bidders must have achieved minimum verifiable sales, supported by documentation (e.g., invoices, bills of lading, sales reports), of the Products described in Section 1.2, *Scope* of 20,000 **tons** within a consecutive one (1) year period immediately preceding the Bid Opening Date to any National Public Entities,.
    a. National Public Entities are defined as state governments, the Federal government, local governments, cities, towns, school districts, libraries, police and fire departments, and other political subdivisions, etc.
    b. (Contractors on existing Group 01800 Award #23409 will be exempted from meeting this requirement).
3. Upon request, all Bidders (excluding Contractors that have previously held an award under NYS OGS Group 01800 within the last two (2) years) must provide a minimum of five references including references from two of the Bidder's largest customers.

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

    The references shall include:

    •Name, address, contact person, telephone number, fax number, and number of years Bidder has serviced the referenced account.

    •Volume of business performed within the past three years for each referenced account.

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

## 3. SPECIFICATIONS

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

# 4. BID SUBMISSION

## 4.1 Performance and Bid Bonds

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

## 4.2 NYS Vendor File Registration

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

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

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

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

It is recommended that 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.

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.

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 (unless noted as "Not required to be submitted with the Bid"). 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 electronic signature that has been generated by software (e.g., DocuSign or Adobe Acrobat Sign) for documents that are not designed to allow for or require an electronic signature. See also Attachment 6 – Bidder Submission Checklist.

| | Bid Document | Required File Format *(Submit on USB)* | Paper also Required *(Submit printed copy)* |
|---|---|---|---|
| **1** | Page 1 of the Solicitation | PDF | **X** |
| **2** | Page 2 of the Solicitation – *Bidder Certification and Affirmation*, with signature | PDF | **X** |
| **3** | Appendix C – *Federal Funding Agency Mandatory Terms and Conditions*, with Section 10 completed (page 6) | PDF | |
| **4** | Attachment 1 – *Pricing* (must be included with the Bid at the Bid Opening / Due date for Bids) | Excel | **X** |
| **5** | Attachment 2 – *NYS Required Certifications*, with signature | PDF | |
| **6** | Attachment 3 – *Encouraging Use of New York State Businesses in Contract Performance* | PDF | |
| **7** | Proof of Compliance with Attachment 4 – *Insurance Requirements.* | PDF | |
| **8** | Attachment 5 – *Bidder Information Questionnaire* | Excel | |
| **9** | Attachment 6 – *Bidder Submission Checklist* | Not required to be submitted with the Bid | |
| **10** | Attachment 7 – *Bidder Questions Form* | Not required to be submitted with the Bid | |
| **11** | Attachment 8 – *Report of Contract Usage* | Not required to be submitted with the Bid | |
| **12** | Attachment 9 – *Certification Under Executive Order 16,* with signature | PDF | |
| **13** | Attachment 10 – *Road & Treated Salt Specifications* | Not required to be submitted with the Bid | |
| **14** | Attachment 11 – *Bidder Certified Product Data Sheet*, with signature | PDF | |
| **15** | Attachment 12 – *Delivery Schedule* | Not required to be submitted with the Bid | |
| **16** | Attachment 13 – *Supplier/Manufacturer's Certificate*, with signature (if applicable) | PDF | |

| | Bid Document | Required File Format *(Submit on USB)* | Paper also Required *(Submit printed copy)* |
|---|---|---|---|
| **17** | Attachment 14 – *Bidder Certification of Provision of Product* | PDF | |
| **18** | Completed *Material Safety Data Sheet*(s) | PDF | |
| **19** | Completed *Independent Laboratory Analysis Report(s)* | PDF | |
| **20** | EEO 100 – *Equal Employment Opportunity Staffing Plan*, with signature (see https://ogs.ny.gov/mwbe/forms under "Commodity & Service Contracts") | PDF | |
| **21** | MWBE 100, *MWBE Utilization Plan*, with signature (see https://ogs.ny.gov/mwbe/forms under "Commodity & Service Contracts") | PDF | |
| **22** | Vendor Responsibility Questionnaire (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 https://www.osc.state.ny.us/state-vendors/vendrep/file-your-vendor-responsibility-questionnaire) | PDF | |
| **23** | ST-220-CA, *Contractor Certification to Covered Agency*, with signature and notary (see https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf) | PDF | |
| **24** | ST-220-TD, *Contractor Certification*, with signature and notary (see https://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf) | Must be submitted directly to the NYS Tax Department | |
| **25** | Published "Bid Solicitation Updates" (if applicable), with signature | PDF | |

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. For Bid identification purposes, include a printed copy of page 1 of the Solicitation with the two (2) USB flash drives in the Bid envelope or package (see 4.6 - *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 copies and original versions (if applicable), of all submitted bid documents until a determination of award is made. If an award is made to Bidder, the bid documents shall be retained by the Bidder for a period of six (6) years after the term of the contract has ended. Document retention for pre- and post-award includes both copies of electronic documents, and original paper documents with required original signatures that have been scanned and submitted electronically. Bidder shall submit such retained documents to OGS upon request.

## 4.5 Bid Pricing Submittal

A Bidder shall submit Attachment 1 – *Pricing* in accordance with Section 4.4 *Content* and the instructions worksheet within Attachment 1 – *Pricing*. Submission of pricing for storage fees shall be collected on Attachment 1 - *Pricing*. Failure to enter all required information on Attachment 1 – *Pricing* may render the Bid non-responsive and result in the rejection of the Bid.

The Attachment 1 – *Pricing* submitted by the successful Bidder shall be incorporated into the resultant Contract and the Bidder shall be required to provide the awarded Product(s) at the prices quoted in its Bid.
Price shall include all customs and duties and be net per ton, FOB destination designated on Purchase Order, including unloading of the bulk salt. Contract prices shall be firm except for price revisions permitted in accordance with the following clauses:

- Section 6.1 - *Contract Term and Extensions*
- Section 6.3 - *Price* (for terms and conditions for pricing for the Contract).
  - Section 6.3.1 - *Fuel Price Adjustment*
  - Section 6.3.2 - *Price Escalation Based on Quantities Exceeding 120% & 130% of Filed Requirement*

Bidder will Bid the price at which it would see Road Salt and/or Treated Salt per ton including shipping costs.

Bidder will submit a Bid price for each OGS Item the Bidder intends to Bid within each Lot (including stockpile locations and product names wherever applicable). A Bidder is not required to Bid on every OGS Item listed within Attachment 1 – *Pricing*.

Bidder will indicate Maximum Bid Capacity of tonnage it is able to hold under this award – both per Lot and in total, for the full contract term as indicated on page 1 of this Invitation for Bids.

Bid pricing submitted in a format other than Attachment 1 – *Pricing* shall render the Bid non-responsive and result in rejection of the Bid. Also, Bidder shall not attempt to alter or modify Attachment 1 – *Pricing* from the original format (e.g. hide or unhide cell(s)/column(s)/row(s)/worksheet(s) or modify formulas in Attachment 1 – *Pricing)*. Only those cells provided for entering a Bidder's response on Attachment 1 – *Pricing* are to be accessed by the Bidder. Any attempt to alter or modify Attachment 1 – *Pricing* beyond what is allowed may result in the Bid being deemed non-responsive and rejected.

In accordance with Appendix B *Pricing*, the NYS prices shall be net, including transportation, customs, tariffs, delivery and other charges fully prepaid by the resultant Contractor to the destination indicated in the Solicitation or Authorized User Purchase Order.

For all dollar amounts that a Bidder may enter, a Bidder may enter up to two (2) decimal places and the formulas included in Attachment 1 – *Pricing* shall calculate based on the full number entered. However, the number displayed in the cells shall be rounded to the nearest whole number.

Additional instructions for submitting Bid pricing are included in the "Instructions" worksheet in Attachment 1 – *Pricing*. A Bidder is responsible for reviewing the completed Attachment 1 – *Pricing* prior to Bid submittal to ensure compliance with the Solicitation requirements and that all necessary fields have been populated correctly.

## 4.6 Bid Envelopes and Packages

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

1. BID ENCLOSED (preferably bold, large print, all capital letters)
2. Solicitation number (IFB #23449)
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 & 2 of the Solicitation, and Attachment 1 – *Pricing*, completed with the Bidder's information. This printed copy of page 1 & 2 of the Solicitation, and Attachment 1 – *Pricing* should be placed in the envelope with the USB flash drives.

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

## 4.7 Bid Delivery

Bids shall be delivered to the following address on or before 1:30 p.m. ET, on or before the Bid opening date as stated in Section 1.4 *Key Events/Dates:*

State of New York Executive Department
Office of General Services
Procurement Services
Corning Tower - 38th Floor Reception Desk
Empire State Plaza
Albany, NY 12242
Attn: Bid Enclosed – Solicitation 23449

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

## 4.8 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 there is no answer, leave a detailed phone message including the following information: reason for visit and/or delivering a Bid, Solicitation number, date and estimated time of delivery or visit, first and last name of visitor, and visitor's cell phone number. Visitor may email customer.services@ogs.ny.gov providing the same information. Visitors who are not pre-registered will be directed to a designated phone at the Corning Tower Information Desk, where they are to call the Procurement Services Receptionist (518) 474-6262 or Customer Services (518) 474-6717 for access. The visitor will be registered at that time. Bids are not allowed to be left at the Corning Tower Information Desk. Please note that delays may occur. Building access procedures may change or be modified at any time.

## 4.9 NYS Required Certifications

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

## 4.10 Data Sheets to Be Furnished with Bid

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

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

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

### 4.10.1 Material Safety Data Sheets (Potentially Toxic Substances)

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

### 4.10.2 Bidder Certified Product Data Sheets

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

### 4.10.3 Independent Laboratory Analysis Report

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

The Bidder shall submit 3rd party lab reports indicating:

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

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

## 4.11 Supplier/Manufacturer's Certificate

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

Through completion and submission of the Supplier/Manufacturer's Certificate, the supplier or manufacturer guarantees that the Bidder is an authorized dealer and has agreed to supply the Bidder with all quantities of Products required by the Bidder in fulfillment of its obligations under any resultant Contract with the State. Bidders shall use the certificate attached to this Solicitation to document this level of support (see Attachment 13 – *Supplier/Manufacturer's Certificate*).

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

## 4.12 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 Bid Deviations should be submitted during the Questions period so that they may be given due consideration prior to the submission of Bids. Material Bid 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.

## 4.13 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 (2) Business Days after the Bid opening.

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

## 4.14 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.

## 4.15 Firm Offer

Bids must remain an effective offer, firm and irrevocable, for at least ninety (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 ninety (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.

## 4.16 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 dates in the *Key Events/Dates* section, or in other Solicitation sections (if applicable), 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 State 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; and

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.

### 4.17 Incorporation

Portions of a successful Bidder's Bid and of this Solicitation shall be incorporated into a final Contract, with a separate document executed by Contractor and OGS. OGS may require that the document be executed with an electronic signature that has been generated by software (e.g., DocuSign or Adobe Acrobat Sign). The 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.

## 5. METHOD OF AWARD

### 5.1 Method of Award

Award shall be made to the lowest responsive and responsible Bidder per OGS item within each Lot and within each County on an F.O.B. Destination Basis, including specified delivery requirements.

OGS will review current on-ground/provision of product (tons) provided in Attachment 14 – *Bidder Certification of Provision of Product* as well as maximum Bid capacity provided in Attachment 1 – Pricing, and will compare this information with the total Filed Requirements for all the low Bid items per each responsive and responsible Bidder.

If OGS determines that the provision of product (tons) provided in Attachment 14 – *Bidder Certification of Provision of Product* does not indicate sufficient tonnage to cover the extent of the low Bid items per responsive and responsible Bidder, OGS reserves the right to limit the tonnage of salt awarded to any one Bidder, taking into consideration the Bidder's stipulated maximum capacity to accept under this award per lot (salt type) as stated in Attachment 1 - *Pricing* and the Bidder's past performance on OGS Contracts.

In the event a Bidder's stipulated maximum capacity to accept under this award per lot is reached, OGS may identify which OGS items are susceptible for a "No Award" taking into consideration the Bidder's stipulated maximum capacity as stated in Attachment 1 – *Pricing,* and the following:

a. OGS Items that received only one Bid
b. The proximity of the Bidder's stockpiles/mines in relation to the OGS item susceptible for "No Award"
c. OGS items where the difference in price between the lowest Bid and the next lowest Bid is in the best interest of the State.
d. The total filed requirement tonnage for each OGS Item susceptible for "No Award"

For OGS Items given a "No Award", award will be made to the next lowest responsive and responsible Bidder (providing the addition does not cause that next lowest Bidder to exceed its maximum capacity to accept under this award per Lot).

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

Bid price for storage fees is not to exceed $3.60/ton from September 1, 2027 through December 31, 2027. If the storage fees Bid price submitted exceeds the cap of $3.60/ton, the Bid price will be evaluated and awarded as $3.60/ton for unmet minimums purchased from September 1, 2027 through December 31, 2027. For salt purchased relating to unmet minimums on or after January 1, 2028, Bid price for storage fees is not to exceed $8.00 per ton/per month.

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

## 5.2 Procurement Instructions for Authorized Users

The following procurement instructions for Authorized Users shall be published on the OGS website for the resultant Contract Award as a stand-alone document separate from the Contract. OGS reserves the right to change the instructions in the stand-alone document, once published, in non-material and substantive ways without seeking a Contract amendment.

A. Each Contractor's approved pricing will be posted on the OGS website so that Authorized Users can find Contract pricing information, Contractor contact information, prompt payment discounts and NYS Purchasing Card information.

B. When utilizing the Contract(s), the Authorized User should be familiar with and follow the terms and conditions governing its use. The Authorized User is responsible for compliance with the requirements of public procurement processes. The Authorized User, when purchasing from OGS Contracts, should also hold the Contractor accountable for compliance with Contract terms, conditions, specifications, and other requirements.

Authorized Users have the responsibility to document purchases which should include:

a. A statement of need and associated requirements;
b. Obtaining all necessary prior approvals;
c. A summary of the Contract alternatives considered for the purchase, if any; and
d. The reasons supporting the resulting purchase (e.g., show that the selection among multiple Contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).

C. All State agencies, political subdivisions, and public benefit corporations (which include most public authorities) having their own purchasing agency are required to purchase approved products and services from Preferred Sources in accordance with § 162 and § 163 of the New York State Finance Law.

Before proceeding with their purchase, such Authorized Users shall check the list of Preferred Source Program offerings for Products that meet the form, function, and utility required.

These Authorized Users are reminded that they must comply with State Finance Law § 162, which requires that they afford first priority to the commodities and services of Preferred Source suppliers, which include the Division of Correctional Industries (Corcraft), the NYS Preferred Source Program for People who are Blind (NYSPSP), and NYS Industries for the Disabled (NYSID), when such commodities or services meet the form, function, and utility of the Authorized User, and the price offered by Corcraft does not exceed a reasonable fair market price, and the price offered by NYSPSP and NYSID is within 15% of prevailing market prices.

If a Preferred Source offering does not meet an Authorized User's form, function, and utility, or the Preferred Source price is more than fair market price or more than 15% above prevailing market prices, then the Authorized User may use this Contract.

D. Authorized Users shall issue Purchase Orders, in accordance with the terms set forth in Appendix B *Purchase Orders*, directly to the Contractor or the Contractor's Authorized Reseller (if applicable), and specify any shipping/delivery requirements, including inside delivery and/or installation. Inside delivery and installation terms must be agreed upon at time of order and prior to delivery. All orders should clearly note the OGS Contract Name and Award Number, Contract Number, and Contractor Name. Authorized users should follow up with Contractor if they do not receive order acknowledgement within five (5) days.

E. Contractor documents which contain additional terms or conditions must receive pre-approval by the Authorized User, in accordance with Appendix B Section 26 – *Modification of Contract Terms*.

F. Upon Authorized User acceptance of Products itemized on the Purchase Order, Contractor will invoice Authorized User for any portion of Products accepted, and accordingly, Authorized User will arrange for payment. Contractor shall provide itemized invoicing for all Products. See also Section 6.10 - *Invoicing and Payment*.

### 5.3 Notification of Award

Tentative Contract award(s) shall consist of written notice to that effect by OGS to selected Bidder(s), and each such Bidder 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 shall be in effect for a term of up to one (1) year. The Contract term shall commence after all necessary approvals and shall become effective September 1, 2026, or upon the date of OSC approval of the final executed documents, whichever is later and the Contract term shall end August 31, 2027.

B. Extensions. At the State's option, and subject to the approval of OSC, the Contract may be extended for up to three (3) years, in increments as deemed to be in the best interest of the State. Whether the optional extensions are exercised is at the sole discretion of the State. A Contractor shall retain the right to decline a Contract extension offered under this section. Any Contract extension will be under the same terms and conditions, subject to any additional applicable statutory and policy requirements. Any extensions provided under this section shall apply in addition to any rights set forth in Appendix B *Contract Term – Extension*.

C. The Contract term provided for in this section shall extend six (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 six (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 thirty (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 ninety (90) calendar days in lieu of thirty (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 Price

The following terms and conditions shall apply to pricing offered under the Contract. For Bid pricing, see Section 4.5 - *Bid Pricing Submittal.*

Price shall include all customs and duties and be net per ton, FOB destination designated on purchase order, including unloading of the bulk salt.

Contract prices shall be firm except for price revisions permitted in accordance with the following clauses:

- Section 6.1 - *Contract Term and Extensions*
- Section 6.3.1 - *Fuel Price Adjustment*
- Section 6.3.2 - *Price Escalation*
- Section 6.3.3 – *Price Reductions*

Should the price structure utilized by the parties become unworkable for the State, detrimental or injurious to the State, or result in prices which are not truly reflective of current market conditions and the price is deemed unreasonable or excessive by the Commissioner of General Services, and no adjustment in price is mutually agreeable, the Commissioner of General Services reserves the sole right upon ten (10) days written notice mailed to the Contractor to terminate any Contract resulting from this Bid opening. If the Contractor is unable or unwilling to meet Contractual requirements in whole or in part, it shall immediately notify the State of that fact, so that the State may take appropriate action.

Such notification shall be in writing and shall be directed to the OGS Procurement Services. Such notification shall not relieve the Contractor of its responsibilities under the Contract.

### 6.3.1 Fuel Price Adjustment

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

a. On a monthly basis an amount may be added or deducted from Contract pricing based on calculations made referencing prices posted in the "EIA Retail On-Highway Diesel Prices".

b. The New England PADD 1A shall be the designated posting for the adjustments. If this source becomes unavailable, unworkable, unsuitable, or not reflective of the market conditions, then another source may be selected by the Commissioner of General Services in their sole discretion.

c. Fuel Price adjustments will be applicable for deliveries of road salt & treated salt made during the Contract period. The fuel price adjustment shall be applied for the **date of delivery**.

i. Ex.: If a Purchase Order for salt is received on January 30, and the salt is delivered on February 2, the fuel price adjustment used will be that for the month of February.

d. The base rate used for calculating adjustments shall be the rate shown in the referenced EIA on the date of the Bid Opening indicated on page 1 of this Invitation for Bids and adjustments will be permitted monthly.

e. The monthly average will be arrived at by using the Monday prices for a given month as displayed in the EIA Retail On-Highway Diesel Prices and determining an average for that month. The previous month's prices shall be used to determine the monthly average (i.e. – August's prices will be used to determine September's adjustment). All prices will be rounded to two (2) decimal places.

f. Fuel Price Adjustment calculations will be posted monthly to the Contract award page on the OGS website:

EXAMPLE FUEL PRICE ADJUSTMENT INCREASE:

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

EXAMPLE FUEL PRICE ADJUSTMENT DECREASE:

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

Deliveries made to meet minimum filed requirement obligations after Contract expiration on August 31, 2027 (where no extension has been granted) will apply the Fuel Price adjustment average for the month in which the Product was delivered which will be calculated using the base price established for the Invitation for Bids.

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

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

Price adjustments are limited to changes as noted above. Increases in Contract costs or prices to compensate for other increases in the cost of doing business, regardless of the cause or nature of such costs of the Contractor, will not be allowed during the Contract period, except as indicated under the fuel price adjustment and price escalation clause herein.

### 6.3.2 Price Escalation

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

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

A price increase of 10% over awarded Contract price will be allowed once quantities delivered are over 120% of an Authorized User's filed requirement. And a price increase of 15% over awarded Contract price will be allowed once quantities delivered are over 130% of an Authorized User's filed requirement.

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

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

Contractors will continue to deliver to all Authorized Users including up to 130% of the Authorized User's filed requirement. Failure to deliver may result in a "Buy Against" or a delivery deduction to the Contractor (see Section 6.12 – *Provision of Product by Alternate Contractor* for more information).

Price escalation is only applicable towards the tonnage delivered by the Contractor.

In the event of the application of provisions under Section 6.12 – *Provision of Product by Alternate Contractor*, the tonnage amount supplied by an alternate Contractor does not factor into the original awarded Contractor's ability to apply a price escalation.

### 6.3.3 Price Reductions

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

## 6.4 Best Pricing Offer

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

## 6.5 Price Structure

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

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

## 6.6 Ordering

Purchase Orders shall be made in accordance with the terms set forth in Appendix B *Purchase Orders*. Authorized Users may submit orders over the phone, and, if available, may submit orders electronically via web-based ordering, email, 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 Username, and sales representative (if applicable).

If an Authorized User is unable to contact a Contractor to place an order with a reasonable amount of outreach, OGS will reach out to the Contractor directly to discuss this issue and may consider the application of Section 6.12 – *Provision of Product by Alternate Contractor*, for that purchase.

## 6.7 Purchasing Card Orders

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

## 6.8 Minimum Order

The minimum order for this Contract is 22 tons.

## 6.9 Minimum/Maximum Purchase Obligation

Authorized Users are obligated to purchase a minimum of 60% of the total filed requirement amount per salt type **with the exception of the counties listed below:**

Authorized Users with delivery locations in the following nine (9) counties are obligated to purchase a **minimum of 50%** of the total filed requirement amount per salt type:

Bronx, Kings, Nassau, New York, Queens, Richmond, Rockland, Suffolk, Westchester.

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

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

In the event of the application of provisions under Section 6.12 – *Provision of Product by Alternate Contractor*, a "Buy Against" purchase the awarded Contractor is still obligated to provide up to 130% of the Authorized Users filed requirement, not including the "Buy Against" tonnage provided by an alternate Contractor.

### 6.9.1 Storage Fees for Unpurchased Minimums

If the Authorized User is not able to take the minimum filed requirement amount, the awarded Contractor for the specific location will store salt for the Authorized User until December 31, 2027, for a one time/per ton storage fee not to exceed $3.60/ton. Storage Fees are capped and invoiceable as follows: (a) September 1, 2027, through December 31, 2027: not to exceed $3.60 per ton (one-time fee) _; and (b) on and after January 1, 2028: not to exceed $8.00 per ton per month. If storage is necessary for an Authorized User from January 1, 2028, and beyond, the awarded Contractor may offer storage at a per month per ton rate not to exceed $8.00 per ton/per month.

## 6.10 Invoicing and Payment

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

The Contractor is required to provide the Authorized User with one (1) 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 .

## 6.11 Delivery Terms

### 6.11.1 Delivery Schedule

The *Delivery Schedule* for this Solicitation is included as an Attachment. It is provided as a guide to indicate proposed delivery points and estimated annual requirements. Contractors shall be obligated to add any State Agency that submits new filed requirement(s) for a delivery location on or before October 31 of the Contract term as long as the tonnage does not cause the awarded Contractor to exceed their maximum Bid capacity amount indicated for the salt type.

OGS shall review and approve any State Agency filed requirement submission prior to outreach to the awarded Contractor. Any State Agency that submits filed requirement(s) on or after November 1 shall be eligible to be added to the delivery schedule and receive deliveries at the Contractor's discretion only.

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

### 6.11.2 Compliance with Delivery Schedule & Purchase Orders

Delivery shall be made in accordance with instructions on the Purchase Order from each Authorized User.

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

### 6.11.3 Ordering Timeliness

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

### 6.11.4 Holidays/Weekends

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

### 6.11.5 Prevention of Contamination

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

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

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

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

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

If, because of emergency conditions, it is necessary for the Authorized User to accept and reprocess the Salt for use, all costs of reprocessing will be charged to the Contractor.

For operational reasons, an additional 10% price deduction may be placed on the Contractor by the Authorized User after consultation with the Contractor and OGS Procurement Services.

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

### 6.11.6 Non-Complying Product – Price Deduction

A non-complying product price deduction is not to be assessed unless the proper analysis and test procedures are followed.

If the Contractor consistently delivers salt found to be outside the specification requirements for moisture content, or consistently not conforming to the gradation requirements, the Contract shall be subject to cancellation either in whole or in parts.

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

### 6.11.7 Acceptance

The salt may be rejected if it fails to conform to any of the requirements of this Solicitation or the specifications in Attachment 10 – *Road & Treated Salt Specifications*.

### 6.11.8 Weight Tickets

All shipments of bulk salt shall be accompanied by a weight ticket of a licensed weigh master indicating the producer, net weight of the delivery, and in the case of bulk delivery, the stockpile source.

Tickets should be filled out with hauler name (printed and signed) and AU rep name printed and signed (if AU rep is present at the time of delivery).

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

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

### 6.11.9 Delivery Timetable

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

- Contractor is required to deliver orders of 600 tons or less* within three (3) Business Days of Authorized User placing an order.
- Contractor will be required to deliver a minimum of 100 tons per day after the initial 600-ton delivery.
- Multiple orders placed for the same delivery site that overlap will be viewed as a single order, still subject to the overall 100 tons per day minimum delivery.

| Single Order Placed on (Day) | First 600 Tons Or Less * Delivered by | Over 600 Tons Minimum 100 Tons/Day until completion |
|---|---|---|
| Monday | Thursday | 100 Tons/Day/Location |
| Tuesday | Friday | |
| Wednesday | Monday | |
| Thursday | Tuesday | |
| Friday | Wednesday | |

**if full amount of order is less than 600 tons*

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

Note: If OGS identifies an ongoing issue indicating that the awarded Contractor is consistently failing to meet the delivery timetable as shown above, then OGS and/or the AU may take steps to initiate the actions listed in Section 6.12 - *Provision of Product by Alternate Contractor*, for the order(s) that are impacted by the delay.

### 6.11.10 Delivery Rate Guarantees/Exceptions

From September 1 through the following May 31 of each Contract term, Contractors shall be required to make deliveries within the timetables set forth in Section 6.11.9 - *Delivery Timetable*. However, from June 1 through August 31 of each Contract term, delivery shall be at the discretion of the Contractor.

Contractor shall notify the Authorized User and OGS Procurement Services promptly regarding any actual or anticipated performance issues, including but not limited to issues such as low supply, late delivery, lack of Product, and insufficient hauling capability.

Contractor shall provide OGS with the following information:

- A summary of the issue
- A description of the impact the issue is anticipated to have on the Contractor's compliance with OGS contract terms
- A proposed resolution by the Contractor; and
- A plan for remediation of the issue

Failure by the Contractor to do so may result in liquidated damages and/or a buy against in accordance with Section 6.11.11 - *Liquidated Damages* and Section 6.12.4 – *Provision of Product by Alternate Contractor - Buy Against Process*.

Although Contractors are expected to make every effort to meet these delivery timeframes, some exceptions may be made for extreme road and/or weather conditions (e.g. roads or waterways that are closed, obstructed, or impassable, due to winter weather conditions).

Allowance for exceptions must be approved by the Office of General Services, Procurement Services, whose decision shall be final.

Delivery will be allowed during the weekend and on State holidays only if the Contractor and the ordering Authorized User mutually agree. No additional remuneration will be made for Saturday, Sunday, or holiday delivery.

### 6.11.11 Liquidated Damages

During the Contract period, each September through the following May 31, deliveries that do not meet the daily delivery tonnage requirements and/or the established order completions period specified, shall be considered cause for interruption of the proper implementation of the State's winter roadway safety.

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

During times when an Authorized User must work with the Contractor to prioritize/coordinate deliveries due to delays, the Contractor is not absolved from meeting delivery timetable requirements at other locations.

During times of extreme weather activity that impact deliveries system-wide, OGS may consider waiving liquidated damages.

If it is determined that the interruption is caused by non-performance or negligence on the part of the Contractor, OGS Procurement Services and the Contractor presume that in the event of any such delay, the amount of damage that is sustained from a delay in daily delivery tonnage requirements and/or the established order completions period specified, is the greater of either:

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

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

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

or

2. Authorized User may bill the Contractor separately

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

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

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

**Liquidated damages may be applied to the Contractor only after consultation with the Contractor and upon receipt of formal approval by OGS Procurement Services.**

## 6.12 Provision of Product by Alternate Contractor

Provision of Product by an Alternate Contractor may be utilized when an awarded Contractor is unable to provide delivery of product required by an Authorized User.

Provision of Product is eligible to be performed by any Contractor that holds an active award with NYS OGS Procurement Services under any Group 01800 Contract.

This clause may be utilized if:

**A. The Contractor has failed to perform, either in a single instance or because of an ongoing issue,**
**B. An Authorized User has a need to purchase due to an extenuating circumstance; or**
**C. Authorization for the purchase has been granted by OGS Procurement Services**

### 6.12.1 Lot I – Road Salt

If a Contractor has failed to perform, because of either an isolated incident or an ongoing issue, Authorized Users who filed requirements for the current Road Salt Contracts under Group 01800 – Lot I, may be approved by OGS to make purchases using an alternate Contractor.

If the current awarded Contractor for an OGS Item under Lot I - Road Salt is unable to supply needed Product, the Authorized User may “charge back” the difference in price to the awarded Contractor.. This action will be identified as a “Buy Against”.

If an Authorized User has been impacted by extenuating circumstances, outside of the Contractor’s responsibility to provide product, approval to purchase using an alternate Contractor may be granted by OGS Procurement Services. This action will not result in a charge back to the awarded Contractor and is not dependent on the Authorized User having filed requirements for delivery under Group 01800 Lot I.

### 6.12.2 Lot II and Lot III – Treated Salt – Types 1 & 2

OGS Procurement Services may, on a case-by-case basis, approve alternate Contractor purchases to be made by Authorized Users who filed requirements under Group 01800 – Lots II and III (Treated Salt – Types 1 & 2)

In these cases, Road Salt would be provided in lieu of Treated Salt only if the Treated Salt type is not available or is quoted at a price that is deemed unacceptable by the Authorized User.

Authorized Users may charge back the difference in price to their original Treated Salt Contractor under Group 01800, as applicable.

### 6.12.3 Provision of Product by Alternate Contractor – Ordering Process

After receiving OGS Procurement Services approval, outreach will be performed either by the Authorized User or by OGS to any Contractors awarded a NYS OGS Procurement Services contract under Group 01800 to provide the amount of product required.

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

Upon receipt, the information will be reviewed by either the Authorized User or OGS. If OGS facilitated the quotes, then the Contractor and Authorized User will be contacted via email with the final approval to initiate provision of product.

### 6.12.4 Provision of Product by Alternate Contractor – Buy Against Process

Awarded Contractors must supply Product in accordance with the terms of the Contract and instructions on Purchase Orders. In the event of the awarded Contractor’s failure to deliver in accordance with Contract requirements, purchase of a specific quantity (pre-determined by OGS), utilizing an alternate Contractor or the open market at the awarded Contractor’s expense may be authorized by OGS. Such authorized purchases will result in chargeback or “Buy Against”

of the cost above the Contract price to the awarded Contractor who fails to comply with delivery terms.

The Authorized User must make OGS Procurement Services aware of the need or of non-delivery/delay in delivery, of product and allow OGS Procurement Services to ascertain if immediate delivery can be made by the awarded Contractor prior to obtaining authorization from OGS Procurement Services to make purchase from an alternate Contractor or a purchase on the open market.

f open market Treated Salt is not readily available, the Authorized User at their discretion may agree to a purchase of Road Salt, in lieu of Treated Salt, for the undelivered quantity or if that option is not available, from the open market.

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

### 6.12.5 Provision of Product by Alternate Contractor - Buy Against Credit/Refund

If the awarded Contractor has failed to perform, the difference between the current awarded price for the applicable Lot and the amount paid for the provision of salt by an alternate Contractor may either be deducted or “charged back” by the Authorized User in one of the following ways:

a). When an invoice is due:

Authorized User may deduct the additional increased amount from the amount due to the awarded Contractor in that invoice under the applicable OGS Item.

b). When an invoice is not due:

The awarded Contractor will issue a credit or refund to the Authorized User for the amount owed as indicated in the executed Buy Against letter issued to the Contractor by OGS

Procurement Services. The Authorized User will have the option to indicate which method, either credit or refund, is preferred.

Credits or refunds are required to be issued within thirty days of receipt of the executed Buy Against letter issued to the Contractor by OGS.

Any remaining credited amounts outstanding for Authorized Users shall be converted to a refund and issued prior to contract expiration.

In either case, OGS Procurement Services will receive a copy of the final invoice as well as all the delivery tickets associated with the delivery. Authorized Users should document in detail the following:

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

This information should be emailed to OGS Procurement Services at:
OGS.sm.SST_roadsalt@ogs.ny.gov

Tonnage approved by OGS Procurement Services to be purchased from an alternate Contractor will be deducted from the Authorized Users minimum filed requirement thereby reducing the final tonnage amount required to meet the Contract minimum purchase requirement.

## 6.13 On-Ground/Delivered Inventory

Contractor shall have the following on-ground/delivered inventory reserved solely for Office of General Services Authorized Users, and shall confirm this information using the form provided by OGS for certification of the tonnage amounts per the schedule listed below:

- October 1, 2026 - 35% of filed requirement for awarded counties
- November 1, 2026 - 50% of filed requirement for awarded counties
- December 1, 2026 - 70% of filed requirement for awarded counties

The completed and notarized form will be provided by the Contractor to OGS by the date indicated above, or upon request by OGS at any time during the course of the Contract term.

After December 1, 2026, the Contractor is obligated to maintain inventories adequate to provide deliveries as required in the time frames and quantities requested.

Any failure by the Contractor to deliver pursuant to Contract terms may result in a “Buy Against” to that Contractor in accordance Section 6.12 – *Provision of Product by Alternate Contractor*

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

## 6.14 Unanticipated Excessive Purchase

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

## 6.15 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/NYS Holidays.

Bidder shall provide a minimum of one (1) 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 (5) Business Days if it’s 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 email to the OGS Contract Management Specialist.

## 6.16 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. Further information regarding business processes, interfaces, and file layouts currently in place may be found at: http://www.sfs.ny.gov and https://www.osc.ny.gov/state-agencies/gfo/chapter-iii/iii1-statewide-financial-system-sfs-overview.

## 6.17 Americans with Disabilities Act (ADA)

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

## 6.18 N.Y. State Finance Law § 139-l

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

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

Pursuant to N.Y. State Finance Law § 139-l, 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.

## 6.19 Insurance

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

## 6.20 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, by no later than the 10th of each month. If the Contract period begins or ends in a fractional portion of a reporting period, only the actual Contract sales for this fractional period should be included in the report.

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

The report is to be submitted electronically via email 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.

In accordance with Section 6.24 - *Environmental Sustainability and NYS Executive Order Number 22*, Products that meet GreenNY Specifications are identified as Lots II & III on Contract Usage Reports.

The Authorized User reserves the right to request its applicable sales data from the Contractor, based on criteria identified by the Authorized User, over the life of the contract. If sales data is requested, Contractor must provide datapoints that are required by Attachment 8 – *Report of Contract Usage*.

## 6.21 Audits

OGS reserves the right, directly or through a designated agent, to audit the accuracy of the Contract Usage Reports (see Section 6.20 Report of Contract Usage). Audits shall be conducted during regular business hours, upon not less than fifteen (15) Business Days prior written notice. OGS reserves the right, directly or through an agent, to review Contract Usage Reports and other such documentation for accuracy of all required reporting documents for both NYS Authorized Users and other parties using this Contract or resulting agreement. As a result of such review, if inaccuracies of more than 5% are found in any of the reporting documents, Contractors shall pay the cost of such audit or three (3) times the discrepancy, whichever is higher. Failure to make such payments or repeated errors on subsequent audits may result in the scheduling of a responsibility meeting in relation to this Contract.

## 6.22 Contractor Requirements and Procedures for Business Participation Opportunities for NYS Certified Minority- and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women

I. New York State Law

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

II. General Provisions

A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of $25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of $100,000 for real property renovations and construction.

B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for MWBEs. Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, State or local laws.

C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, a finding of non-responsibility, breach of contract, withholding of funds, liquidated damages pursuant to clause IX of this section, and/or enforcement proceedings as allowed by the Contract and applicable law.

III. Equal Employment Opportunity (EEO)

A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to all Contractors, and any subcontractors, awarded a subcontract over $25,000, for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to, the contracting State agency (the "Work") except where the Work is for the beneficial use of the Contractor.

1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate or distinct from the Contract; or (ii) employment outside New York State.

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

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

C. NYS Contract System Workforce Utilization Reporting Module (Commodities & Services)
The Contractor shall complete, and shall require each of its subcontractors to complete a Workforce Audit on a quarterly basis throughout the term of this Contract, by the 10th day

of April, July, October, and January to report the actual workforce utilized during the previous quarter in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. Contractor shall coordinate with its subcontractors to ensure that all workers associated with this Contract are properly counted and reported. To prepare the report, Contractor and its subcontractors shall use the NYS Contract System Workforce Audit Module found at the following website: https://ny.newnycontracts.com

The Workforce Audits must be completed electronically in the NYS Contract System Workforce Audit Module. Separate audits shall be completed by Contractor and all subcontractors, and the Contractor is responsible for ensuring timely submission of the Workforce Audit by their subcontractors. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall complete the Workforce Audit and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall complete the Workforce Audit and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.

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

IV. Contract Goals

A. OGS hereby establishes an overall goal of 10% for MWBE participation, 5% for Minority-Owned Business Enterprises (“MBE”) participation and 5% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs). The total Contract goal can be obtained by utilizing any combination of MBE and /or WBE participation for subcontracting and supplies acquired under the Contract.

B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract goals established in clause IV-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address:. https://ny.newnycontracts.com/. The MWBE Regulations are located at 5 NYCRR § 140 – 145. Questions regarding compliance with MWBE participation goals should be directed to the Designated Contacts within the OGS Office of Business Diversity. Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women’s Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

C. Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract (see clause VII below).

V. MWBE Utilization Plan

A. In accordance with 5 NYCRR § 142.4, Bidders are required to submit a completed Utilization Plan on Form MWBE 100 with their bid.

B. The Utilization Plan shall list the MWBEs the Bidder intends to use to perform the Contract, a description of the Contract scope of work the Bidder intends the MWBE to perform to meet the goals on the Contract, the estimated or, if known, actual dollar amounts to be paid to an MWBE. By signing the Utilization Plan, the Bidder acknowledges that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by New York State Certified MWBEs after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OGS.

C. By entering into the Contract, Bidder/Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. When an MWBE is serving as a broker on the Contract, only 25 percent of all sums paid to a broker shall be deemed to represent the commercially useful function performed by the MWBE

D. OGS will review the submitted MWBE Utilization Plan and advise the Bidder of OGS acceptance or issue a notice of deficiency within 30 days of receipt.

E. If a notice of deficiency is issued; Bidder agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the Bidder and direct the Bidder to submit, within five (5) business days of notification by OGS, a request for a partial or total waiver of MWBE participation goals on Form BDC 333.1. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

F. OGS may disqualify a Bidder's bid/proposal as being non-responsive under the following circumstances:

(a) If a Bidder fails to submit an MWBE Utilization Plan;

(b) If a Bidder fails to submit a written remedy to a notice of deficiency;

(c) If a Bidder fails to submit a request for waiver; or

(d) If OGS determines that the Bidder has failed to document good faith efforts.

G. If awarded a Contract, Contractor certifies that it will follow the submitted MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in clause IV-A of this Section.

H. Bidder/Contractor further agrees that a failure to submit and/or use such completed MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OGS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

VI. Request for Waiver

A. Prior to submission of a request for a partial or total waiver, Bidder shall contact the Designated Contacts listed on page 1 of this document for guidance.

B. In accordance with 5 NYCRR § 142.7, a Bidder/Contractor who is able to document good faith efforts to meet the goal requirements, as set forth in clause VII below, may submit a

request for a partial or total waiver on Form BDC 333.1, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its MWBE Utilization Plan. If a request for waiver is submitted with the MWBE Utilization Plan and is not accepted by OGS at that time, the provisions of clauses V(C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) business days of receipt.

C. Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.

D. If OGS, upon review of the MWBE Utilization Plan and Monthly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE contract goals.

VII. Required Good Faith Efforts

In accordance with 5 NYCRR § 142.8, Contractors must document their good faith efforts toward utilizing MWBEs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

1. A list of the general circulation, trade and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers, copies of such solicitations and any responses thereto.

2. A list of the certified MWBEs appearing in the Empire State Development ("ESD") MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.

3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with, or obtaining supplies from, certified MWBEs.

4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.

5. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.

6. Other information deemed relevant to the request.

VIII. Monthly MWBE Contractor Compliance Report

A. In accordance with 5 NYCRR § 142.10, Contractor is required to report Monthly MWBE Contractor Compliance to OGS during the term of the Contract for the preceding month's activity, documenting progress made towards achievement of the Contract MWBE goals. OGS requests that all Contractors use the New York State Contract System ("NYSCS") to report subcontractor and supplier payments made by Contractor to MWBEs performing

work under the Contract. The NYSCS may be accessed at https://ny.newnycontracts.com/. This is a New York State-based system that all State agencies and authorities will be implementing to ensure uniform contract compliance reporting throughout New York State.

B. When a Contractor receives a payment from a State agency, it is the Contractor's responsibility to pay its subcontractors and suppliers in a timely manner. On or after the first day of each month, the Contractor will receive an email or fax notification ("audit notice") indicating that a representative of its company needs to log-in to the NYSCS to report the company's MWBE subcontractor and supplier payments for the preceding month. The Contractor must also report when no payments have been made to a subcontractor or supplier in a particular month in the NYSCS. Once subcontractor and supplier payments have been entered into the NYSCS, the subcontractor(s) and supplier(s) will receive an email or fax notification advising them to log into the NYSCS to confirm that they actually received the reported payments from the Contractor. It is the Contractor's responsibility to educate its MWBE subcontractors and suppliers about the NYSCS and the need to confirm payments made to them in the NYSCS.

C. To assist in the use of the NYSCS, OGS recommends that all Contractors and MWBE subcontractors and suppliers sign up for the following two webinar trainings offered through the NYSCS: "**Introduction to the System - Vendor training**" and "**Contract Compliance Reporting - Vendor Training**" to become familiar with the NYSCS. To view the training schedule and to register visit: https://ny.newnycontracts.com/FrontEnd/TrainingList.asp

D. As soon as possible after the Contract is approved, Contractor should visit https://ny.newnycontracts.com and click on "**Vendor Account Lookup**" to identify the Contractor's account by company name. Contact information should be reviewed and updated if necessary by choosing "**Change Info**." It is important that the staff member who is responsible for reporting payment information for the Contractor be listed as a user in the NYSCS. Users who are not already listed may be added through "**Request New User**." When identifying the person responsible, please add "**- MWBE Contact**" after his or her last name (i.e., John Doe – MWBE Contact) to ensure that the correct person receives audit notices from the NYSCS. NYSCS Technical Support should be contacted for any technical support questions by clicking on the links for "**Contact Us & Support**" then "**Technical Support**" on the NYSCS website.

E. If Contractor is unable to report MWBE Contractor Compliance via the NYSCS, Contractor must submit a Monthly MWBE Contractor Compliance Report on Form MWBE 102 to OGS, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: OGS OBD Office, 29th floor Corning Tower, Empire State Plaza, Albany, NY 12242. Phone: 518-486-9284; Fax: 518-486-9285.

F. It is the Contractor's responsibility to report subcontractor and supplier payments. Failure to respond to payment audits in a timely fashion through the NYSCS, or by paper to OGS, may jeopardize future payments pursuant to the MWBE liquidated damages clause in clause IX below.

IX. Breach of Contract and Liquidated Damages

A. Where OGS determines that the Contractor is not in compliance with the MWBE requirements of this Section, and the Contractor refuses to comply with such requirements, or if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, the Contractor shall be obligated to pay liquidated damages to OGS.

B. Such liquidated damages shall be calculated as an amount equaling the difference between:

1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and

2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

C. If OGS determines that Contractor is liable for liquidated damages and such identified sums have not been withheld by OGS, Contractor shall pay such liquidated damages to OGS within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

X. Fraud

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

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

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

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

Article 3 of the New York State Veterans' Services Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"), thereby further integrating such businesses into New York State's economy. OGS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OGS contracts.

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

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

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

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

## 6.24 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. GreenNY Specifications**.

A list of GreenNY specifications is located on the OGS website at https://ogs.ny.gov/greenny/approved-greenny-specifications. Specification(s) currently applicable to this Contract are "Treated Road Salt" (see https://ogs.ny.gov/greenny/treated-road-salt). See Attachment 10 – *Road & Treated Salt Specifications for the applicable specifications*.

**B. Product Labeling per GreenNY Specifications**

Over the life of the Contract, the Contractor must label the environmental attributes of all environmentally preferable Products per the GreenNY specifications, or other applicable environmental specifications for this Contract, on its Contract pricelist (see Attachment 1 – *Pricing*), and in any catalogs, marketing materials, or online ordering portal associated with this Contract.

Contractor(s) shall also note Products that meet GreenNY Specifications on Contract Usage Reports (see Section 6.20 *Report of Contract Usage*), in the format requested by OGS.

All claims made about the environmental attributes of the Products and packaging offered shall be consistent with the Federal Trade Commission's (FTC's) *Guidelines for the Use of Environmental Marketing Terms*. The State of New York reserves the right to require the Contractor to remove any environmental claims that are false, vague, misleading or unsubstantiated in catalogs, price sheets, websites or other marketing materials that are provided to the Authorized User under this Contract.

**C. Verification of Contractor Compliance with GreenNY Requirements and Other Environmental Claims**

At the request of OGS or the Authorized User, Contractor must provide verification of Product and packaging compliance with GreenNY specifications, required third-party certification(s), minimum amount of recycled content, or other environmental attributes required in the Contract. OGS and the Authorized User also reserve the right to request information documenting the Product and packaging desirable attributes and other Contractor environmental claims. The following types of verification documentation will be accepted:

- Third-party certification
- Product test results
- Compliance certification or affidavit signed by the manufacturer
- Other acceptable documentation as approved by OGS or the Authorized User

## 6.25 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.

## 6.26 Diesel Emission Reduction Act

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

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

## 6.27 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.

## 6.28 Overlapping Contract Products

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

## 6.29 Preferred Source Products

Section 162 of the State Finance Law requires that Authorized Users afford first priority to the Products of Preferred Source Program suppliers such as Corcraft (the marketplace name for the NYS Department of Corrections and Community Supervision, Division of Industries), New York State Preferred Source Program for People who are Blind (NYSPSP), and New York State Industries for the Disabled (NYSID), and others determined by law, when such Products meet the form, function and utility of the Authorized User. Some Products in the resultant Contract may be available from one (1) or more Preferred Source Program suppliers. An Authorized User must determine if a particular Product is an approved Preferred Source Product and follow the

requirements of State Finance Law § 162(3) or (4)(b), respectively, before engaging the Contractor.

## 6.30 NYS Vendor Responsibility

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

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

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

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

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

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

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

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

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

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

## 6.31 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 (4) 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 (4) quarterly periods immediately preceding the quarterly period in which the certification is made.

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

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

## 6.32 Non-State Agencies Participation in Centralized Contracts

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

Upon request, all eligible non-State agencies must furnish Contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. A list of categories of eligible entities is available on the OGS web site (https://ogs.ny.gov/procurement/nys-laws-extending-use-state-centralized-contracts). Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to NYS Procurement Services Customer Services at 518-474-6717.

## 6.33 Extension of Use

Any Contract resulting from this Solicitation may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State and the Contractor. Political subdivisions and other authorized entities within each participating state or governmental jurisdiction may also participate in any resultant Contract if such state normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

## 6.34 New Accounts

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

## 6.35 Drug and Alcohol Use Prohibited

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

## 6.36 Traffic Infractions

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

## 6.37 Contract Documents; Electronic Format

OGS requires Contractor to submit all documents to OGS in an electronic format, including electronic copies of documents that require original signatures. Documents requested by OGS should be submitted in the format specified by OGS, which may include a requirement for an electronic signature that has been generated by software (e.g., DocuSign or Adobe Acrobat Sign). Contractor is responsible for retaining all copies and originals (if applicable) of documents submitted to OGS 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. This requirement includes both electronic documents, and original paper documents with required original signatures that have been scanned and submitted electronically. Contractor shall submit such retained documents 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 (transferee/assignee) upon OGS consent to the assignment.