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

BID OPENING **DATE: August 6, 2026** **TIME:** 1:30 P.M. ET **SOLICITATION NUMBER:** **23451**	**TITLE: Group 32100 - Snow & Ice Control Agents (Statewide)** **Classification Codes: 12**
CONTRACT PERIOD:	**The later of (i) October 1, 2026, or (ii) the date of OSC approval through September 30, 2028**

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 Contract Management Specialist 1 Phone: (518) 473-2663	Brandy Alden Contract Management Specialist 2 Phone: (518) 408-1140

Bidder's Federal Tax Identification Number: *(Do Not Use Social Security Number)*	**NYS Vendor Identification Number:** *(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 # 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

TABLE OF CONTENTS

SECTION 1 - INTRODUCTION 7
1.1 Overview 7
1.2 Scope 7
1.3 Estimated Quantities 8
1.4 Key Events/Dates 8
1.5 NYS Contract Reporter 9
1.6 Bidder Questions 9
1.7 NYS Comptroller Approval 9
1.8 MWBE & SDVOB Interest in Partnering with Bidders 10
1.9 Summary Of Policy and Prohibitions on Procurement Lobbying 10
1.10 Definitions 10
1.11 Appendices and Attachments 11
1.12 Conflict of Terms 12
Section 2 - BIDDER QUALIFICATIONS 13
Section 3 - SPECIFICATIONS 14
Section 4 - BID SUBMISSION 15
4.1 Performance and Bid Bonds 15
4.2 NYS Vendor File Registration 15
4.3 Format of Bid Submission 15
4.4 Content 16
4.5 Bid Pricing Submittal 18
4.6 Product Information to be Furnished with the Bid 19
4.7 Bid Envelopes and Packages 19
4.8 Bid Delivery 20
4.9 Important Building Access Procedures 20
4.10 NYS Required Certifications 20
4.11 Supplier/Manufacturer's Certificate 20
4.12 Bid Deviations 21
4.13 Bid Opening Results 21
4.14 Bid Liability 21
4.15 Firm Offer 21
4.16 NYS Reserved Rights 21
4.17 Incorporation 22
SECTION 5 - METHOD OF AWARD 23
5.1 Method of Award 23
5.2 Procurement Instructions for Authorized Users 23
5.3 Notification of Award 24
Section 6 - TERMS AND CONDITIONS 25
6.1 Contract Term and Extensions 25

6.2 Short term Extension 25
6.3 Price 25
6.4 Fuel Price Adjustment 26
6.5 Best Pricing Offer 27
6.6 Price Structure 27
6.7 Quick Quote 27
6.8 Ordering 28
6.9 Minimum Order 28
6.10 Purchasing Card Orders 28
6.11 Product Delivery 29
6.12 Invoicing and Payment 29
6.13 Weigh Tickets 30
6.14 Audits 30
6.15 Product Sustainability and Liability 30
6.16 Product Returns and Exchanges 31
6.17 Unanticipated Excessive Purchase 31
6.18 Contract Administration 31
6.19 NYS Financial System (SFS) 31
6.20 Americans with Disabilities Act (ADA) 31
6.21 N.Y. State Finance Law § 139-l 32
6.22 Insurance 32
6.23 Report of Contract Usage 32
6.24 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 33
6.25 Participation Opportunities For New York State Certified Service-Disabled Veteran Owned Businesses 38
6.26 Bulk Delivery and Alternate Packaging 39
6.27 Environmental Sustainability and NYS Executive Order Number 22 40
6.28 Consumer Products Containing Mercury 41
6.29 Diesel Emission Reduction Act 41
6.30 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment 41
6.31 Overlapping Contract Products 42
6.32 Preferred Source Products 42
6.33 NYS Vendor Responsibility 42
6.34 NYS Tax Law Section 5-a 43
6.35 “OGS or Less” Guidelines 44
6.36 Non-State Agencies Participation in Centralized Contracts 44
6.37 Extension of Use 44
6.38 New Accounts 44

6.39 Centralized Contract Modifications 44
6.40 Drug and Alcohol Use Prohibited 45
6.41 Traffic Infractions 45
6.42 Samples 45
6.43 Re-Weighing Product 46
6.45 New York State Buy American Salt Act 46

APPENDICES

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 – *Snow & Ice Specifications*
Attachment 11 – *Bidder Certified Product Data Sheet*
Attachment 12 – *Supplier/Manufacturer's Certificate*

SECTION 1 - INTRODUCTION

1.1 Overview

This Solicitation is issued by the New York State ("NYS") Office of General Services ("OGS"), Procurement Services for Snow and Ice Control Agents as specified herein for all Authorized Users eligible to purchase through this Solicitation.

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

1.2 Scope

The resultant contract(s) are to provide the following to various locations throughout the State:

- Liquid Calcium Chloride corrosion inhibited
- Liquid Calcium Chloride with Organic Based Performance Enhancer (OBPE)
- Liquid Magnesium Chloride corrosion inhibited
- Liquid Magnesium Chloride with OBPE
- Treated Salt in bulk (Types 1 & 2)
- Calcium Chloride (to be offered in 50 lb. bags of flake or pellet form)
    - Flake Type S Class A
    - Pellet Type S Grade 2 Class B
- Solar Salt for brine making (in bulk or totes)

State and eligible non-state agencies may participate. Refer to Attachment 1 – *Pricing* for a description of the Lots and the OGS Items included in each Lot. OGS Items are bid by individual county or by NYSDOT Region (each Region contains a group of counties) depending on the Lot. See Attachment 10, Section 3.2 - *Region Chart* for a detailed description of counties in each Region.

LOT	OGS Item Description	Bid by Region OR Bid by County
Lot 1	Liquid Calcium Chloride corrosion inhibited	Region
Lot 2	Liquid Calcium Chloride with OBPE	Region
Lot 3	Liquid Magnesium Chloride corrosion inhibited	Region
Lot 4	Liquid Magnesium Chloride with OBPE	Region
Lot 5	Treated Salt Type 1 (in bulk)	County
Lot 6	Treated Salt Type 2 (in bulk)	County
Lot 7	Calcium Chloride Flake ASTM Type S Class A	Region
Lot 8	Calcium Chloride Pellet ASTM Type S Grade 2 Class B	Region
Lot 9	Solar Salt for brine making (in bulk)	County
Lot 10	Solar Salt for brine making (in totes)	Region

1.3 Estimated Quantities

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

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

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

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

1.4 Key Events/Dates

Event	Date	Time
Solicitation Release	July 10th, 2026 *(tentative)*	N/A
Closing Date for Bidder Questions	July 21st, 2026	5:00 PM ET
OGS Procurement Services' Responses to Bidder Questions	July 27th, 2026 *(tentative)*	N/A
Bid Opening / Due date for Bids	August 6th, 2026	1:30 PM ET
Contract Approval Date / Award Publish Date	October 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.

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

1.6 Bidder Questions

All questions regarding this Solicitation should be submitted using Attachment 7 – *Bidder Questions Form*, citing the applicable Solicitation document name and document section. The completed form must be emailed to ogs.sm.SST_roadsalt@ogs.ny.gov by the date and time indicated in the *Key Events/Dates* section. 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. 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 23451 MWBE or SDVOB INTEREST_COMPANY NAME*" to ogs.sm.SST_roadsalt@ogs.ny.gov on or before the bid opening date. 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 – *Snow & Ice Specifications*

Attachment 11 – *Bidder Certified Product Data Sheet*

Attachment 12 – *Supplier/Manufacturer's Certificate*

1.12 Conflict of Terms

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

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

Section 2 - BIDDER QUALIFICATIONS

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

A Bidder shall meet the following qualifications:

- A Bidder must guarantee that it has a source of supply from a Supplier/Manufacturer, (this requirement only applies if the Bidder does not own/operate the salt mine, and/or, if the Bidder is not the Manufacturer of the product), 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 4.11 – Supplier/Manufacturer's Certificate.
- Bidder shall supply Attachment 11 – Bidder Certified Product Data Sheet and Material Safety Data Sheets. See Section 4.6 – Product Information to be Furnished with the Bid.
- Upon request, all Bidders, **excluding those contractors holding a contract on Award #23357 Snow & Ice Control Agents (Statewide)**, 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 this Solicitation and any resulting Contract. 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.

Section 3 - SPECIFICATIONS

See Attachment 10 – Snow & Ice Control Agents Specifications for general and detailed specifications and Lot structuring for the following products included in this Solicitation:

- Liquid Calcium Chloride corrosion inhibited
- Liquid Calcium Chloride with Organic Based Performance Enhancer (OBPE)
- Liquid Magnesium Chloride corrosion inhibited
- Liquid Magnesium Chloride with OBPE
- Treated Salt in bulk (Types 1 & 2)
- Calcium Chloride (to be offered in 50 lb. bags in flake or pellet form) as:
  - Flake Type S Class A
  - Pellet Type S Grade 2 Class B
- Solar Salt for brine making (bulk or 1-ton totes)

Section 4 - BID SUBMISSION

4.1 Performance and Bid Bonds

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

4.2 NYS Vendor File Registration

Prior to being awarded a Contract pursuant to this Solicitation, the Bidder and any authorized resellers who accept payment directly from the State, must be registered in the New York State Vendor File (Vendor File) administered by the Office of the State Comptroller (OSC). This is a central registry for all vendors who do business with New York State Agencies and the registration must be initiated by a State Agency. Following the initial registration, a unique New York State ten-digit vendor identification number (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 complete Bid consists of submission of the following documents (unless noted as "Not required to be submitted with the bid").

	Bid Document	**Electronic (USB)**	**Original (Hard Copy)**
A.	Completed Page 1 of the Solicitation	**X** (PDF)	**X**
B.	Completed Page 2 of the Solicitation, *Bidder Certification and Affirmation*, with original ink signature	**X** (PDF)	**X**
C.	Completed Attachment 1 – *Pricing* ***NOTE: If a Bidder is submitting multiple Bids for different products under Lot 1, Lot 2, Lot 3 & Lot 4, a separate Attachment 1 – Pricing labeled as "YOUR COMPANY NAME – PRODUCT" will be required for each product bid***	**X** (Excel)	**X**
D.	Completed Attachment 2 – *NYS Required Certifications* with original ink signature	**X** (PDF)	
E.	Completed Attachment 3 – *Encouraging Use of NYS Businesses*	**X** (PDF)	
F.	Proof of Compliance with Attachment 4 – *Insurance Requirements*	**X** (PDF)	
G.	Completed Attachment 5 – *Bidder Information Questionnaire*	**X** (Excel)	
H.	Attachment 6 – *Bidder Submission Checklist*	Not required to be submitted with the bid	
I.	Attachment 7 – *Bidder Questions Form*	Not required to be submitted with the bid	
J.	Attachment 8 – *Report of Contract Usage*	Not required to be submitted with the bid	
K.	Completed Attachment 9 – *Certification Under Executive Order 16* with original ink signature	**X** (PDF)	
L.	Attachment 10 – Snow & Ice Control Agents Specifications	Not required to be submitted with the bid	
M.	Completed Attachment 11 – *Bidder Certified Product Data Sheet* with original ink signature	**X** (PDF)	
N.	Completed Attachment 12 – *Supplier/Manufacturer's Certificate* with original ink signature (if applicable)	**X** (PDF)	

	Bid Document	**Electronic (USB)**	**Original (Hard Copy)**
O.	Completed Appendix C – *Federal Funding Agency Mandatory Terms and Conditions* with original ink signature, with Section 10 completed	**X** (PDF)	
P.	Completed ST-220 CA – *Contractor Certification*, notarized with original ink signatures: https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf	**X** (PDF)	
Q.	ST-220-TD, *Contractor Certification*, with signature and notary. https://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf	**X** (PDF)	
R.	Completed EEO 100 – *Equal Opportunity Staffing Plan* for Commodity & Service Contracts, with original ink signature: http://ogs.ny.gov/MWBE/Forms	**X** (PDF)	
S.	MWBE 100, MWBE Utilization Plan, with signature (form located under "Commodity & Service Contracts")	**X** (PDF)	
T.	Completed Standard Vendor Responsibility Questionnaire with original ink signature or Certification that Questionnaire has been completed online.	**X** (PDF)	
U.	Material Safety Data Sheets	**X** (PDF)	
V.	Specific Gravity Charts (if applicable)	**X** (PDF	
W.	Independent Laboratory Analysis Report – certification for the product(s) being bid ***NOTE: This is required only if Bidder does not currently hold a contract on OGS Award #23357 – Snow & Ice Control Agents (Statewide) for the product(s) being bid***	**X** (PDF)	

All documents must be completed in accordance with the instructions for the individual document, which may include an original signature or an original notarized signature. At this time, OGS cannot accept an 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*.

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 Section 4.7 *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).

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.

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.

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 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*. 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 Products at the prices quoted in its Bid. See also Section 6.3 *Price* for terms and conditions for pricing for the Contract.

A. A Bidder is not required to Bid on every Lot or every OGS Item within each Lot listed within Attachment 1 – *Pricing*.

   1. Bidder shall provide a bid price at which it would sell each OGS Item within each Lot.

   2. Bidder shall list stockpile locations and include product names wherever applicable.

B. 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.

C. 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.

D. For all dollar amounts that a Bidder may enter, a Bidder may enter up to three (3) 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 no more than two (2) decimal places (e.g., $6.246 shall be rounded to $6.25 and $7.232 shall be rounded to $7.23).

E. 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 Product Information to be Furnished with the Bid

The Bidder shall submit with its bid detailed specifications, circulars and all necessary data on the commodity(ies) to be furnished. If the commodity(ies) offered differ(s) from the provisions listed, such differences should 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.

A. 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 Authorized User shall provide that Authorized User 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.

B. Specific Gravity Charts

The Bidder shall submit with their bid a specific gravity chart for Lots I, II, III, and IV with correlating weight and freeze point information presented in 1% increments beginning with a 5% solution. The chart must contain information up to, including, and exceeding 5% (or the solubility limits of the product) the concentration being submitted for evaluations (see example chart for Magnesium Chloride). Physical specifications including detailed information on the corrosion inhibitor used in the product and minimum concentration of the corrosion inhibitor should be included with the bid document.

C. Bidder Certified Product Data Sheets

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

D. Independent Laboratory Analysis Report - certification for the product(s) being bid).

An independent certified analysis conducted within the PAST 3 YEARS showing compliance with specification requirements outlined in Attachment 10, Sections 1, 2, and/or 3 of this Invitation for Bids should be submitted with the bid. ***(Only required if Bidder does not currently hold a contract on Award #23357 – Snow & Ice Control Agents (Statewide)***

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 the Authorized User. All costs associated with rejected deliveries shall be borne by the contractor.

4.7 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# 23451)
3. Bid Opening Date and Time
4. The number of boxes or packages (e.g., 1 of 2; 2 of 2)

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

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

4.8 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/IFB/RFP #23451

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.

4.9 Important Building Access Procedures

To access the Corning Tower, all visitors must check in by presenting photo identification at the Corning Tower Information Desk. Delays may occur due to a high volume of visitors. Visitors conducting Procurement Services business are encouraged to pre-register for building access by contacting the Procurement Services Receptionist at (518) 474-6262 or Customer Services (518) 474-6717 at least 24 hours prior to the visit. If no answer, leave a detailed phone message including the following information: reason for visit and/or delivering a bid, solicitation number, date and estimated time of delivery or visit, first and last name of visitor, and visitor's cell phone number. Visitor may email customer.services@ogs.ny.gov providing the same information. Visitors who are not pre-registered will be directed to a designated phone at the Corning Tower Information Desk, where they are to call the Procurement Services Receptionist (518) 474-6262 or Customer Services (518) 474-6717 for access. The visitor will be registered at that time. Bids are not allowed to be left at the Corning Tower Information Desk. Please note that delays may occur. Building access procedures may change or be modified at any time.

4.10 NYS Required Certifications

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

4.11 Supplier/Manufacturer's Certificate

A Bidder offering road salt from a mine not owned and operated by itself must furnish the written authority of the operator of the mine to sell road salt from such mine. Similarly, if the Bidder is not the Manufacturer of the product, it must furnish written authority of the Manufacturer of the product.

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 12– *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 sixty (60) 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.

SECTION 5 - METHOD OF AWARD

5.1 Method of Award

Award(s) shall be given on the basis of lowest price, to up to three responsive and responsible bids for each OGS Item, to ensure an adequate supply of product in the event of a severe winter. Only one Award will be allowed for the same manufacturer's product within an OGS Item. A Bidder may submit a bid for one or all OGS Items. Determination as to the number of products awarded to an OGS Item will be at the sole discretion of OGS Procurement Services.

Authorized Users shall purchase from the lowest priced product for an OGS Item unless the product does not meet their form, function and utility requirements, is unavailable for delivery, or the Authorized User can document for the Procurement Record a rationale for the purchase of other than the lowest priced product.

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 Attachment 1 – *Pricing*, will be posted on the OGS website so that Authorized Users can find Contract pricing 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. Also, in recognition of market fluctuations over time, Authorized Users are encouraged to seek improved pricing whenever possible. Authorized Users have the responsibility to document purchases which should include:

- A statement of need and associated requirements;
- Obtaining all necessary prior approvals;
- A summary of the Contract alternatives considered for the purchase, if any; and
- 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. The Contracts resulting from this Solicitation will be Centralized Contracts issued under a multiple award structure. Pursuant to State Finance Law § 163(10)(c), at the time of purchase, Authorized Users must base their selection among multiple Contracts upon which is the most practical and economical alternative that is in the best interests of the State. Authorized Users are required to obtain three (3) quotes when multiple Contractors offer Products that are identical to the Product being sought (e.g., multiple Contractors offer a Product that has an identical manufacturer's model code). Authorized Users are strongly encouraged to seek a minimum of three (3) quotes, where possible, when multiple Contractors offer Product(s) that are similar in nature to the Product being sought (e.g., multiple Contractors offer a Product that is a similar size, style and/or material). Authorized Users are also encouraged to seek better than Contract pricing for all items, especially when purchasing in volume, as Contractors may not automatically offer volume discounts.

E. 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.

F. 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*.

G. 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 6.12 I*nvoicing 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.

Section 6 - TERMS AND CONDITIONS

6.1 Contract Term and Extensions

Base Term. The Contract shall be in effect for up to two (2) years. The Contract term shall commence after all necessary approvals and shall become effective October 1, 2026, or upon the date of OSC approval of the final executed documents, whichever is later. The contract term shall end September 30, 2028.

Extensions. At the State's option, and subject to the approval of OSC, the Contract may be extended for up to one (1) year, 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 may be exercised either separately or in combination with the one (1) year extension period set forth in Appendix B, Contract Term – Extension.

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

Pricing will be collected using Attachment 1 – *Pricing* in accordance with the Instructions tab listed within Attachment 1. Prices submitted will be a fixed, base price for the contract term.

Lots 1 – 4

Price shall include all customs duties and charges, and be **net per gallon**, freight on board (FOB) destination to any point in New York State as designated by the ordering Authorized User within the respective **region**.

Lots 5, 6, 9

Price shall include all customs duties and charges, and be **net per ton**, FOB destination to any point in New York State as designated by the ordering Authorized User within the respective **county**.

Lots 7 – 8, 10

Price shall include all customs duties and charges, and be **net per ton**, FOB destination to any point in New York State as designated by the ordering Authorized User within the respective **region** (tailgate delivery).

6.4 Fuel Price Adjustment

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

- Amount of adjustment may be added or deducted from contract pricing based on prices posted in the "U.S. Energy Information Administration Retail On-Highway Diesel Prices" (EIA). The New England PADD 1A shall be the designated posting for the adjustments. If this source becomes unavailable, unworkable, or unsuitable, then another source may be selected by NYS OGS Procurement Services.
- The base rate used for calculating adjustments shall be the rate shown in the referenced EIA on the date of the bid opening and adjustments will be permitted monthly. The monthly average will be arrived at by using the Monday prices for a given month as displayed in the EIA and determining an average for that month. The previous month's prices shall be used to determine the monthly average (i.e. – January's prices will be used to determine February's adjustment). All prices will be rounded to two decimal places.
- **The fuel price adjustment shall be applied for the date of delivery.**
- **For Lots 1 - 4, the Fuel Price Adjustment shall equal $0.50 per 1000 gallons for each $0.10 change in fuel price.**

  Example Fuel Price Adjustment Increase:
  Published rate on date of bid opening $4.18
  Monthly Average Price $4.28
  $4.28 - $4.18 = $0.10
  A $0.50/1000 gallon price increase would apply,

  Example Fuel Price Adjustment Decrease:
  Published rate on date of bid opening $4.18
  Monthly Average Price $4.08
  $4.08 - $4.18 = -$0.10
  A $0.50/1000 gallon price decrease would apply.

- **For Lots 5, 6 and 9 the Fuel Price Adjustment shall be $0.10 per ton for each $0.10 change in fuel price.**

  Example Fuel Price Adjustment Increase:
  Published rate on date of bid opening $4.18
  Monthly Average Price $4.28
  $4.28 - $4.18 = $0.10
  A $0.10 per ton price increase would apply.

  Example Fuel Price Adjustment Decrease:
  Published rate on date of bid opening $4.18
  Monthly Average Price $4.08
  $4.08 - $4.18 = -$0.10

  A $0.10 per ton price decrease would apply.

Additional Notes on Fuel Price Adjustment

Should postings differ from current description and/or format, a posting determined by the Commissioner of the Office of General Services in his/her sole discretion to be most reflective of market conditions will be used. Corrections to posted prices will be considered only when caused by a typographical or clerical error on the part of said posting.

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

In the event of a contract extension, the fuel price adjustment will be based on the new average for the month in which the product is delivered, applying the same base established for the original contract term.

Prices may be

6.5 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.

6.6 Price Structure

If, during the Contract Term, the Contractor is unable or unwilling to meet contractual requirements as a 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.

6.7 Quick Quote

Authorized Users may try to obtain lower prices by sending out a quick quote form to all contractors in their county or region for that OGS Item. If bid security is an issue, the Authorized User can require bids to be sealed and opened publicly.

Authorized Users are to accept the lowest bid meeting their form, function and utility requirements, provided however, in accordance with the New York State Buy American Salt Act, an Authorized User may, at the Authorized User's discretion, purchase rock salt or sodium chloride that is mined or hand harvested in the United States when it is within ten percent (10%) of the lowest price per item, rather than from the lowest responsible and reliable bidder for that item. There are no negotiations permitted following this "Quick Quote" bid and prices cannot be changed once offered. If for any reason the lowest bid is not taken, the Authorized User should prepare detailed documentation explaining the action taken (i.e., the low contractor could not provide the product in the time frame required). This explanation along with the worksheets should be made as part of the record.

Contractors shall be permitted to reduce their pricing at any time during the contract term. In addition, contractors may choose to offer lower prices in specific instances or for particular projects. Contractors may do so through the agencies use of the "Quick Quote" procedure (below).

Contractors are not required to lower prices when they receive a quick quote. They may quote their contract price. However, at no time may a price be quoted that is higher than their contract price. Any awarded price can be lowered by the contractor during the quick quote process.

6.8 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).

6.9 Minimum Order

The minimum order for this Contract is

Lots 1 – 4

- Minimum order is 4,000 gallons.
- Orders should be placed for 4,000 gallons or multiples thereof.
- Minimum delivery is 4,000 gallons for one location, or 2,000 gallons for each of two locations.
- Orders requiring delivery to two locations are subject to the 2,000-gallon pricing.

Lots 5, 6, & 9

- Minimum delivery shall be 22 tons in bulk per delivery location.

Lots 7, 8, & 10

- Minimum delivery shall be truckload delivery as indicated on Attachment 1 – Pricing tabs of this Invitation for Bids for Lots 8 and 10.

6.10 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.

6.11 Product Delivery

Delivery requirements for this Contract are as follows per Lot:

Lots 1 – 4

- The product shall be delivered in bulk in tank trucks
- Each delivery truck shall be equipped for unloading product, and;
- Have either an approved liquid meter for accurately measuring the amount of liquid product delivered or verifiable weight receipts

Lots 5, 6, & 9

- Product shall be shipped in bulk delivery no less than 15 days from placement of order
- All shipments of product shall be totally covered with a waterproof tarpaulin or similar sheeting material
- Torn or ripped coverings may be cause for rejection of shipment
- Evidence of free-flowing water/brine in particular shipments may be cause for rejection
- Product shall be received in a free-flowing and usable condition

Lots 7 – 8

- Product shall be palletized, maximum weight 2000lbs (40 bags)
- Material is to be in 50lb moisture-proof bags
- Pallets of equal value shall be exchanged at time of delivery or arranged between the contractor and the authorized user

Lot 10

- Product shall be palletized.
- Material is to be in one (1)-ton (2,000 lbs.) moisture-proof totes with bottom discharge (spout feature).
- Pallets of equal value shall be exchanged at time of delivery or arranged between the contractor and the authorized user.

Additional delivery requirements not specified above shall be in accordance with Appendix B, Product Delivery and Shipping/Receipt of Product.

6.12 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.

6.13 Weigh Tickets

All shipments of bulk salt (Lot 5, 6, & 9) shall be accompanied by a weight ticket of a licensed weighmaster indicating the producer, net weight of the delivery, and in the case of bulk delivery, the stockpile source. The certification should bear the weighmaster's signature; weights shall be recorded from a scale equipped with a weight printing device. Handwritten weights are not acceptable.

6.14 Audits

OGS reserves the right, directly or through a designated agent, to audit the accuracy of the Contract Usage Reports (see Section 6.23 *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.

6.15 Product Sustainability and Liability

Deviation from specifications may result in rejection of any delivery. All costs associated with rejected deliveries will be the responsibility of the contractor.

Should a product be found to be contaminated (after application) with non-specified elements and become cause for environmental concerns that necessitate clean-up of yards, storage facilities, or roadsides, etc., the contractor shall be responsible for any and all expenses incurred.

6.16 Product Returns and Exchanges

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

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

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

6.17 Unanticipated Excessive Purchase

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

6.18 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.

6.19 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.

6.20 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.

6.21 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.

6.22 Insurance

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

6.23 Report of Contract Usage

Contractor shall submit Attachment 8 – *Report of Contract Usage* including total sales to Authorized Users of this Contract by Contractor, and all authorized resellers, dealers and distributors, if any, *no later than the 10th following the close of each calendar quarter*. 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 6.27 *Environmental Sustainability and NYS Executive Order Number 22*, Contractor shall identify any Products that meet GreenNY Specifications 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*.

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

6.24 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.

6.25 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/

6.26 Bulk Delivery and Alternate Packaging

New York State encourages the use of innovative packaging that reduces the weight of packaging and the generation of packaging waste. A Contractor is encouraged to use reusable materials and containers and to utilize packaging configurations that take advantage of storage containers designed to be part of the Product for the shipment of multi-unit purchases. Authorized Users are urged to inquire about these programs at the time of purchase and determine the best solution for their needs. The following required and encouraged attributes apply to all layers of Product packaging.

A. Packaging is REQUIRED to have the following sustainability attributes:

1. Pursuant to NYS Hazardous Packaging Law Section 37-0205, the vendor is prohibited from offering packaging or packaging components (inks, dyes, pigments, adhesives, stabilizers, or any other additives) with lead, cadmium, mercury, or hexavalent chromium at concentration levels exceeding 100 parts per million by weight (0.01%).

2. Pursuant to NYS Expanded Polystyrene Foam Container and Loose Packaging Law Section 27-3003, the vendor is prohibited from offering polystyrene loose fill packaging.

3. Packaging must not contain polyvinyl chloride (PVC).

4. Plastic packaging must not be labeled with terms "biodegradable", "decomposable", "degradable", or "oxo-degradable".

5. If packaging is labeled as compostable it must be certified by the Biodegradable Products Institute (BPI), Compost Manufacturing Alliance (CMA), or an equivalent certifier approved by the State.

B. Contractor is ENCOURAGED to offer one (1) or more of the following sustainability attributes:

1. Bulk shipping, order consolidation, and right-sizing packaging

2. Ship products in only the manufacturer's packaging

3. Packaging that is:
   - Reusable, including pallets, pallet wrap, boxes, and other types of containers
   - Free of expanded polystyrene
   - Free of per- and polyfluoroalkyl substances (PFAS) (Note: Items that are certified by BPI or CMA are verified PFAS-free)
   - Compostable (Note: Compostable packaging should only be used in areas where a composting facility exists and will accept the material)

- Recyclable (i.e., accepted by most recycling service providers in NYS)
- Made of a single material
- Contains a minimum of 25% post-consumer recycled content

C. Verification of Packaging Requirements and Additional Desirable Attributes

At the request of OGS or the Authorized User, the Contractor must provide verification of compliance with one (1) or more of the required sustainability attributes for packaging. OGS and the Authorized User also reserves the right to request information documenting the 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

6.27 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 Lot 5 Treated Salt Type 1 and Lot 6 -Treated Salt Type 2. See *Attachment 10 – Snow & Ice Specifications* for the applicable specifications. Granular sodium chloride (rock salt) treated with corrosion inhibited liquid magnesium chloride – categorized as Type 1 or Type 2 treated salt. Type 1 is defined as rock salt treated with at least 25% Magnesium Chloride concentration (w/v). Type 2 is defined as rock salt treated with 13 - 24% Magnesium Chloride Concentration (w/v) plus a minimum of 12% Organic Based Performance Enhancer mixed in.

Where applicable and appropriate, available at a competitive cost and where it meets operational objectives, affected entities shall, to the maximum extent practicable, use treated salt as an alternative to untreated salt or sand. Affected entities are encouraged to use treated salt in environmentally sensitive areas. Sand is the least desirable alternative due to the potential for increased human health and ecological impacts.

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 6.23 *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

6.28 Consumer Products Containing Mercury

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

6.29 Diesel Emission Reduction Act

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

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

6.30 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.

6.31 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.

6.32 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.

6.33 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.

6.34 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.

6.35 "OGS or Less" Guidelines

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

Agencies are reminded that they must provide the State Contractor an opportunity to match the non-Contract savings at least two (2) Business Days prior to purchase. In addition, purchases made under "OGS or Less" flexibility must meet all requirements of law including, but not limited to, advertising in the New York State Contract Reporter, prior approval of the Office of the State Comptroller and competitive bidding of requirements exceeding the discretionary threshold. State Agencies should refer to Procurement Council Guidelines for additional information.

6.36 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.

6.37 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.

6.38 New Accounts

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

6.39 Centralized Contract Modifications

A. OGS, an Authorized User, or the Contractor may suggest modifications to the Centralized Contract or its Appendices. Except as specifically provided herein, modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the parties. Modifications may take the form of an update or an amendment. "Updates" are changes that do not require a change to the established Centralized Contract terms and conditions. A request to add new Products at the same or better price level is an example of an update. "Amendments" are any changes that are not specifically

covered by the terms and conditions of the Centralized Contract, but inclusion is found to be in the best interest of the State. A request to change the contractual term and condition is an example of an amendment.

B. Updates to the Centralized Contract and the Appendices may be made in accordance with the contractual terms and conditions to incorporate new Products, make price level revisions, delete Products, or to make such other updates to the established Centralized Contract terms and conditions, not resulting in a change to such terms and conditions, which are deemed to be in the best interest of the State.

C. OGS reserves the right to consider modifications which are not specifically covered by the terms of the Centralized Contract but are judged to be in the best interest of the State. Such modifications are deemed amendments to the Centralized Contract and may require negotiations between Contractor and OGS before execution.

D. All modifications proposed by Contractor shall be processed in accordance with Appendix D – *Contract Modification Procedure.* The Contractor shall submit all requests in the form and format contained in Appendix D – *Contract Modification Procedure*. The form contained within Appendix D is subject to change at the sole discretion of OGS.

E. Modifications proposed by OGS or an Authorized User, including updates and amendments, shall be processed in accordance with the terms of the Centralized Contract and Appendix B *Modification of Contract Terms*.

6.40 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.

6.41 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.

6.42 Samples

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

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

B. **Enhanced Samples** - When an approved sample exceeds the minimum specifications, all Product delivered must be of the same enhanced quality and identity as the sample. Thereafter, in the event

of a Contractor's default, the Commissioner may procure a Product substantially equal to the enhanced sample from other sources, charging the Contractor for any additional costs incurred.

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

D. **Testing** - All samples are subject to tests in the manner and place designated by the Commissioner, either prior to or after Contract award. Unless otherwise stated in the Solicitation, Bidder samples consumed or rendered useless by testing will not be returned to the Bidder. Testing costs for samples that fail to meet Contract requirements may be at the expense of the Contractor.

E. **Requests for Samples by Authorized Users** - Requests for samples by Authorized Users require the consent of the Contractor. Where Contractor refuses to furnish a sample, Authorized User may, in its sole discretion, make a determination on the performance capability of the Product or on the issue in question.

6.43 Re-Weighing Product

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

6.44 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.

6.45 New York State Buy American Salt Act

In accordance with the Buy American Salt Act (State Finance Law § 162-a), when soliciting a Quick Quote for the purchase of rock salt or sodium chloride through this Solicitation, any Authorized User may, at the Authorized User's discretion, award such contract to the responsible and reliable bidder offering to supply rock salt or sodium chloride that is mined or hand harvested in the United States, and which offer is within ten percent (10%) of the lowest price or best value offer per item, rather than to the lowest responsible and reliable bidder for that item.

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