



Contract Award Notification

Title	:	Group 01800 – ROAD SALT, TREATED SALT, & EMERGENCY STANDBY ROAD SALT (STATEWIDE) Classification Code(s): 12
Award Number	:	22955 (Partially Replaces Award 22843)
Contract Period	:	September 1, 2015 – August 31, 2020
Bid Opening Date	:	July 16, 2015
Date of Issue	:	September 3, 2015 (Revised August 30, 2019)
Specification Reference:		As Incorporated in the Invitation for Bids
Contractor Information:		Appears on Page 5 of this Award

Address Inquiries To:

State Agencies & Vendors		Political Subdivisions & Others	
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**Procurement Services values your input.
Complete and return the *Contract Performance Report* at the end of the document.**

Description

Road Salt is used for snow and ice control. Treated Salt is granular sodium chloride (Rock Salt) treated with corrosion inhibited liquid magnesium chloride – Types 1 and 2. These are filed requirement contracts which require the Contract User to purchase 70% of their filed requirement or 50% of their filed requirement if an awarded county is for Solar Salt. Automatic price increases become effective once deliveries exceed 120% of the Contract User's filed requirement.

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SECTION 1: INTRODUCTION

1.1 Contractor Information

NOTE: See individual contract items to determine actual awardees.

<u>Contract</u>	<u>Contractor & Address</u>	<u>Fed ID#/NYS Vendor ID#</u>
PC67019	American Rock Salt Co., LLC PO Box 190 Mt. Morris, NY 14510	16-1516458 1000008297
<u>Contact for New York State Contract Orders</u> (during normal business hours):		<u>Emergency Contact</u> (after normal business hours; weekend/holidays):
Toll-Free#	888-762-7258	Toll-Free# N/A
Phone #:	888-762-7258	Phone #: 585-519-5247
Contact:	Customer Service	Contact: Jamie A. McClain
E-mail:	customerservice@americanrocksalt.com	E-mail: jamie.mcclain@americanrocksalt.com
Website:	www.americanrocksalt.com	
Hours:	8:00AM - 4:30PM Monday-Friday	

<u>Contract</u>	<u>Contractor & Address</u>	<u>Fed ID#/NYS Vendor ID#</u>
PC67020 SB	Atlantic Salt, Inc. 134 Middle St., Ste. 210 Lowell, MA 01852	13-2914699 1000026327
<u>Contact for New York State Contract Orders</u> (during normal business hours):		<u>Emergency Contact</u> (after normal business hours; weekend/holidays):
Toll-Free#	N/A	Toll-Free# N/A
Phone #:	718-816-7200	Phone #: 978-453-4911 or 978-379-6979
Contact:	Diane Banjany	Contact: Jason Archambault
E-mail:	saltlady@atlanticsalt.com	E-mail: jarchambault@easternsalt.com
Website:	N/A	
Hours:	8:00AM – 5:00PM Monday-Friday Saturday & Sunday upon request	

<u>Contract</u>	<u>Contractor & Address</u>	<u>Fed ID#/NYS Vendor ID#</u>
PC67022	Morton Salt, Inc. 444 West Lake St., Ste. 3000 Chicago, IL 60606	47-2089879 1100213182
<u>Contact for New York State Contract Orders</u> (during normal business hours):		<u>Emergency Contact</u> (after normal business hours; weekend/holidays):
Toll-Free#	855-665-4540	Toll-Free# N/A
Phone #:	855-665-4540	Phone #: 630-861-2722
Contact:	Customer Service	Contact: Michelle Staunton
E-mail:	buyroadsalt@mortonsalt.com	E-mail: mstaunton@mortonsalt.com
Website:	www.mortonsalt.com	
Hours:	7:00AM – 4:00PM Monday-Friday	

**INVOICES MUST BE SENT DIRECTLY TO THE ORDERING AGENCY FOR PAYMENT.
(See Appendix B, *Contract Invoicing*.)**

AGENCIES SHOULD NOTIFY THE NYS OGS PROCUREMENT SERVICES PROMPTLY IF THE CONTRACTOR FAILS TO MEET DELIVERY OR OTHER TERMS OF THIS CONTRACT. PRODUCTS OR SERVICES WHICH DO NOT COMPLY WITH THE SPECIFICATIONS OR ARE OTHERWISE UNSATISFACTORY TO THE AGENCY SHOULD ALSO BE REPORTED TO PROCUREMENT SERVICES.

1.2 Overview and Scope

These contracts provide a procurement mechanism for State and eligible non-State entities to purchase bulk Road Salt (Rock & Solar), Treated Salt (Types 1 & 2), and Emergency Standby Road Salt (Rock & Solar) for delivery to various locations in New York State. This Award includes four (4) Lots as follows:

Lot	Salt Type	Number of Awardees
I	Road Salt (Rock & Solar)	One per County
II	Treated Salt – Type 1	One per County
III	Treated Salt – Type 2	One per County
IV	Emergency Standby Road Salt (Rock & Solar)	Multiple per County

State and eligible non-state agencies may participate on a filed requirement basis (estimated quantities).

This Contract Award Notification outlines the terms and conditions, and all applicable information related to Contractor and User participation. All parties involved are strongly urged to become familiar with their rights and responsibilities, as outlined in this document.

1.3 Small, Minority- and Women-Owned Businesses

The letters SB listed under the Contract Number indicate the Contractor is a NYS Small Business. Additionally, the letters MBE and WBE indicate the Contractor is a Minority-owned Business Enterprise and/or Woman-owned Business Enterprise.

1.4 Recycled, Remanufactured and Energy Efficient Products

OGS Procurement Services supports and encourages the purchase of recycled, remanufactured, energy efficient and "energy star" products. If one of the following codes appears as a suffix in the Award Number or is noted under the individual Contract Number(s) in this Contract Award Notification, please look at the individual awarded items for more information on products meeting the suffix description.

RS, RP, RA	Recycled
RM	Remanufactured
SW	Solid Waste Impact
EE	Energy Efficient
E*	EPA Energy Star
ES	Environmentally Sensitive

1.5 Note to All Non-State Agencies and Contractors

All such participating non-State agencies and Contractors understand, acknowledge and agree that the primary responsibility in regard to performance of the contract, of any obligation, covenant, condition or term thereunder by either such party thereto shall be borne and is expressly assumed by the participating Non-State agencies and Contractors and not by the State. In the event of a failure or breach in performance of any such contract by a non-State agency or Contractor, the State specifically and expressly disclaims any and all liability for such defective performance or breach, and the eligible participating Non-State agencies and Contractors guarantee to save the State, its officers, agents and employees harmless from any liability that may be or is imposed by the failure of either party to perform in accordance with its obligations, covenants and the terms and conditions of the State centralized contract.

1.6 Debriefing

Contractors and bidders are accorded fair and equal treatment with respect to the opportunity for debriefing. OGS shall, upon request, provide a debriefing to any bidder or awarded Contractor that responded to the IFB or RFP regarding the reason that the proposal or bid submitted by the unsuccessful bidder was not selected for a contract award. The post award debriefing should be requested by the bidder or awarded Contractor within thirty days of posting of the contract award on the OGS website.

SECTION 2: CONTRACT ADMINISTRATION

2.1 Contract Amendment Process

During the term of the Contract, the Contract may be amended by the mutual agreement of the parties.

2.2 Contract Administrator

Contractor must provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Information regarding the Contract Administrator shall be set forth in Attachment 2 - *General Questions*. Contractor must notify OGS within five (5) Business Days if its Contract Administrator changes, and provide an interim contact person until the position is filled.

Changes to Contractor contact information, including the designation of a new Contract Administrator, shall be submitted electronically via e-mail to the OGS Contract Management Specialist.

SECTION 3: TERMS AND CONDITIONS

3.1 Appendix A

Appendix A, *Standard Clauses For New York State Contracts*, dated January 2014, attached hereto, is hereby expressly made a part of this Contract Award Notification as fully as if set forth at length herein.

3.2 Appendix B

Appendix B, *Office of General Services General Specifications*, dated April 2016, attached hereto, is hereby expressly made a part of this Contract Award Notification as fully as if set forth at length herein and shall govern any situations not covered by this document or Appendix A.

3.3 Contract Term

The Contract(s) shall be in effect from September 1, 2019 through August 31, 2020.

3.4 Contract Extension

If mutually agreed upon between OGS and the Contractor, the Contract may be extended under the same terms and conditions for up to three (3) additional one (1) year periods.

In the event a replacement Contract has not been issued at the time of Contract expiration, any Contract let and awarded hereunder by the State, may be extended unilaterally by the State for an additional period of up to one (1) month upon notice to the Contractor with the same terms and conditions as the original Contract including, but not limited to, quantities (prorated for such one [1] month extension), pricing, and delivery requirements. With the concurrence of the Contractor, the extension may be for a period of up to three (3) months in lieu of one (1) month. However, this extension terminates should the replacement Contract be issued in the interim.

3.5 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.
- 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. Form EEO 101 - Workforce Utilization Reporting Form (Commodities and Services) ("Form EEO-101-Commodities and Services")
1. The Contractor shall submit, and shall require each of its subcontractors to submit, a Form EEO-101-Commodities and Services to OGS to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Form EEO-101-Commodities and Services must be submitted electronically to OGS at EEO_CentCon@ogs.ny.gov on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January.
 2. Separate forms shall be completed by Contractor and any subcontractor.
 3. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services 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 submit the Form EEO-101-Commodities and Services 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) during the term of this Contract in the following counties: **Albany, Allegany, Bronx, Chautauqua, Columbia, Dutchess, Erie, Genesee, Greene, Herkimer, Kings, Lewis, Monroe, Nassau, New York, Niagara, Onondaga, Orange, Orleans, Queens, Rensselaer, Richmond, Saratoga, Schenectady, Seneca/Cayuga, Suffolk, Sullivan, Ulster, Warren, Wayne, and Wyoming**. 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/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. 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 Minority- and Women Owned Businesses Enterprises. 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, 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. 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. 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, Contractor shall speak to the Designated Contacts of the OGS Office of Minority- and Women-Owned Business Enterprises for guidance.
- B. In accordance with 5 NYCRR § 142.7, a 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, 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 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 with entry of a zero-dollar value 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/events.asp>
- D. As soon as possible after the Contract is approved, Contractor should visit <https://ny.newnycontracts.com> and click on "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 MWBE 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 requirements of this Contract, 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://www.ogs.ny.gov/MWBE/Forms.asp>

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

Article 17-B of the New York State Executive 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, 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, 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://www.ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf

Contractor is encouraged to contact the Division of Service-Disabled Veteran's Business Development at 518-474-2015 to discuss methods of maximizing participation by SDVOBs on the Contract.

ALL FORMS ARE AVAILABLE AT: https://www.ogs.ny.gov/Core/SDVOBA.asp?_sm_au_=iVVjF227tLtF4JJH

3.7 Authority of Operator

A Contractor 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.

3.8 Inventory Maintenance

The Contractor is obligated to maintain inventories adequate to provide deliveries as requested in the time frames and quantities requested. Any failure by the Contractor to deliver under contract terms may result in a “Buy Against” to that Contractor.

If, at any time during the contract period, extenuating circumstances arise and it is determined by the Office of General Services that the Contractor does not have adequate inventory, award may be made to another bidder at the discretion of the Office of General Services.

The above shall also apply to any contract extension or renewal.

3.9 Fill Plan and Summary Reports

Within one week after notice of a tentative award the low bidder shall provide a fill plan for each Item in which it is low, indicating inventories, stockpiles, commitments and a design and schedule to maintain the stockpiles. A review will also be made of the Contractor’s capability to provide salt from the source of the salt to the customers. For example, the Contractor may be required to provide a certified statement attesting to the number of trucks dedicated to OGS Procurement Services customers, the number of trucking contracts, name and address of trucking companies, etc. This information is subject to verification during the contract period and the contract, or any part thereof, is subject to cancellation if the fill plan cannot be verified. Award may then be made to the next low responsible bidder or may be re-bid.

Contractor shall furnish monthly summary reports no later than ten (10) days after the close of each calendar month for the months of September through March for the Office of General Services customer inventory fill activities. The monthly summary shall include, but is not limited to, quantity of salt in each stockpile at the beginning of the month, method of transportation of product to stockpiles and delivery locations, quantity of monthly additions to each stockpile, quantity of salt in each stockpile at the end of each month, and activation of satellite stockpiles, if applicable.

The Contractor is obligated to maintain inventories adequate to provide deliveries of ordered quantities within the required time frames. Any failure by the Contractor to deliver under contract terms may result in a “Buy Against” to that Contractor.

If at any time during the contract period, extenuating circumstances arise and it is determined by the Office of General Services that the Contractor does not have adequate inventory, award may be made at the discretion of the Office of General Services to another bidder.

The above shall also apply to any contract extension or renewal.

3.10 Optional Delayed Billing Program

Contractor, at its option, may participate in a delayed billing program for the benefit of political subdivisions for orders delivered during September, October, and November 2019. Payment would not be required until January 2020. This program would be available to encourage fall season filling of stockpiles and storage sheds and accommodate the budget process of the political subdivisions. This program would be coordinated directly by the Authorized User with the particular Contractor. Contractor may also delay crediting/debiting fuel price adjustments until the end of the contract with the concurrence of the Authorized Users. Contractor must advise Authorized Users how they intend to process invoices upon receipt of first purchase order for salt. No changes to agreed-upon processing methodology may be made during the contract period.

3.11 Procurement Card

No Contractors have indicated that they will accept the NYS Purchasing Card for orders not to exceed \$15,000.

3.12 Price

Price shall include all customs and duties and be net per ton, Free on Board (F.O.B.) Destination designated on purchase order, including unloading of the bulk salt. Contract prices shall be firm except for price revisions permitted in accordance with the following clauses:

- PRICE ESCALATION BASED ON EXCEEDING 120% & 130% OF FILED REQUIREMENT;
- PRICE ESCALATION BASED ON EXCEEDING 150% OF FILED REQUIREMENTS;
- FUEL PRICE ADJUSTMENT;
- PRICE ADJUSTMENT FOR RENEWALS.

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

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

A price escalation will be permitted when delivery quantities exceed 120% of filed requirement per delivery location. Customers with multiple delivery sites (e.g. NYS DOT, NYS Thruway and County Highways) shall have their minimum/maximum delivery quantities determined based on the sum of all their sites serviced by a supplier.

An automatic unit price increase of 10% will be allowed once quantities delivered are over 120% of a user's filed requirement. Once deliveries exceed 130% of a user's filed requirement, the automatic price increase will change to 15%. Contractors will continue to deliver to all customers including up to 150%. Failure to deliver may result in a "Buy Against" or a delivery deduction to the Contractor.

Once the Contractor has requested and received a price increase, agencies are allowed to solicit prices from other Contractors who are a part of the award. If a lower price is secured, the Contractor for the specific location must be given an opportunity to match or better the offered price. If the Contractor will not or cannot match or better the offered price, agencies may obtain their needs from the lower priced State contract holder.

3.14 Price Escalation Based on Exceeding 150% of Filed Requirement

Contract purchases over 150% of filed requirements can be made upon mutual agreement of the Authorized User and the Contractor with a price escalation not to exceed 35% of the contract price. Purchases over 150% of the filed requirements at pricing exceeding the 35% escalation will be considered non-contract purchases. No buy-against nor liquidated damages will be imposed for failure to comply with the delivery terms and conditions of this contract for quantities over 150% of the filed requirements.

3.15 Fuel Price Adjustment

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

- Fuel Price adjustments will be made for deliveries of road salt during the contract period. A monthly update will be posted to the OGS website. Deliveries made after August 31 to meet minimum filed requirement obligations will use the fuel price adjustment in effect for August 31.
- On a monthly basis an amount may be added or deducted from contract pricing based on prices posted in the "EIA Retail On-Highway Diesel Prices". The New England PADD 1A shall be the designated posting for the adjustments. (If this source becomes unavailable, unworkable, unsuitable, then another source may be selected by OGS Procurement Services.)
- The 2019/20 base rate for calculating adjustments will be established as posted in the EIA Retail On-Highway Diesel Prices for New England PADD1A for the week beginning August 5, 2019. The monthly average will be arrived at by using the Monday prices for a given month as displayed in the EIA Retail On-Highway Diesel Prices and determining an average for that month. The previous month's prices shall be used to determine the monthly average (i.e. – August's prices will be used to determine September's adjustment). All prices will be rounded to two decimal places.

- The fuel price adjustment shall be applied for the date of delivery.

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

EXAMPLE FUEL PRICE ADJUSTMENT INCREASE:

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

Monthly Average Price – Published rate on date of bid opening = Fuel Price Adjustment

$\$4.17 - \$4.07 = \$0.10$ = Additional amount allowed to be added to price per ton.

EXAMPLE FUEL PRICE ADJUSTMENT DECREASE:

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

Monthly Average Price – Published rate on date of bid opening = Fuel Price Adjustment

$\$3.97 - \$4.07 = -\$0.10$ = Amount allowed to be deducted from price per ton.

3.16 Fuel Price Adjustment for quantities exceeding 120% & 130%

The calculation for the fuel price adjustment for quantities ordered over the 120% and 130% thresholds with 10% or greater surcharges shall be as follows:

(Base price per ton * surcharge) + (fuel price adjustment) = adjusted price per ton

EXAMPLE OF FUEL PRICE ADJUSTMENT INCREASE FOR ORDER OVER 120% OF FILED REQUIREMENT:

Base price per ton in contract	\$60 (example only)
Published fuel rate on date of bid opening	\$4.07
Monthly Average Price of fuel	\$4.17
Fuel price adjustment ($\$4.17 - \$4.07 = \$0.10$)	\$0.10
Surcharge of 10%	1.1

$(\$60 * 1.1) + (\$0.10) = \$66.10$ per ton

3.17 Additional Notes on Fuel Price Adjustment

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

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

- Price adjustments are limited to changes in pre-selected posting as noted above. Increases in contract costs or prices to compensate for other increases in the cost of doing business, regardless of the cause or nature of such costs of the Contractor, will not be allowed during the contract period, except as indicated under the fuel price adjustment and price escalation clause herein.
- Should the price structure utilized by the parties become unworkable for the State, detrimental or injurious to the State, or result in prices which are not truly reflective of current market conditions and the price is deemed unreasonable or excessive by the Commissioner of General Services, and no adjustment in price is mutually agreeable, the Commissioner of General Services reserves the sole right upon 10 days written notice mailed to the Contractor to terminate any contract resulting from this bid opening. If the Contractor is unable or unwilling to meet contractual requirements in whole or in part, it shall immediately notify the State of that fact in order that the State may take appropriate action. Such notification shall be in writing and shall be directed to the OGS Procurement Services. Such notification shall not relieve the Contractor of its responsibilities under the Contract.
- In the event of a renewal, the base rate for calculating adjustments will be the rate shown in the referenced EIA on the date of the next bid year's bid opening and for subsequent years additional renewals would follow this format. If there is no bid opening date for the next year, the base rate for calculating adjustments will be the rate shown in the referenced EIA one year after the last bid opening date. If the date is not a business date when the posting occurs, the next business day will be the date used for the adjustment.

3.18 Price Adjustment for Renewals

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

3.19 Price Reductions

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

3.20 Estimated Quantities

The quantities listed for Road Salt and Treated Salt are based on the requirements filed for each using entity.

Emergency Standby Road Salt has no filed requirements and there is no guarantee of usage against resultant contracts.

3.21 Minimum/Maximum Obligations

Authorized Users are obligated to take 70% minimum (50% minimum for solar salt) of their filed requirements during the contract period and contractors are obligated to deliver up to 150% of the filed requirement for Road Salt and Treated Salt. However, Authorized Users with multiple delivery sites (e.g., NYSDOT, County Highways and NYS Thruway) shall have their minimum/maximum delivery quantities determined based on the sum of all their sites serviced by a Contractor per lot.

When the Authorized User is not able to take the minimum required amount, the salt contractor will store salt for the Authorized User until December 31 of that calendar year at the rate of \$3.60/ton (i.e., user did not take minimum by 8/31/20 – contractor will store through 12/31/20). If storage is necessary for an Authorized User beyond 12/31/20, the salt contractor may offer storage at a per month rate of \$3.60/ton. Delivery of stored salt between 9/1/20 and 5/31/21 shall meet the delivery requirements in the Delivery Timetable section of the Contract Award Notification.

CONTRACTOR STORAGE CHARGES:

Contractor Name	Price/Ton to Store to 12/31/19	Price/Ton/Month to Store After 12/31/19
American Rock Salt	\$3.60/ton	\$3.60
Atlantic Salt, Inc.	\$3.50/ton	\$3.50
Morton Salt, Inc.	\$3.60/ton	\$3.60

CONTRACTOR TRUCKLOAD DELIVERIES:

Contractor Name	Truck Capacity
American Rock Salt	22 – 38 tons
Atlantic Salt, Inc.	22 – 35 tons
Morton Salt, Inc.	38 tons

3.22 Delivery Terms

Road Salt and Treated Salt shall be shipped bulk delivery as outlined below.

3.23 Delivery Schedule

The Delivery Schedule for this contract is available on the OGS Procurement Services website at http://www.ogs.ny.gov/purchase/spg/lists/gp_018.asp. It is provided as a guide to indicate proposed delivery points and estimated annual requirements. Contractors shall be obligated to add to the delivery schedule any State agency that submits filed requirement(s) on or before December 31. Any State agency that submits filed requirement(s) after December 31 shall be eligible to be added to the delivery schedule and receive deliveries at the Contractor's option only.

Any political subdivision or other Non-State entity which has not filed a requirement with OGS Procurement Services as of the date of the bid opening shall be eligible to be added to the delivery schedule and receive deliveries at the Contractor's option only, and upon placement of a valid purchase order to the Contractor's address as indicated in the award.

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

3.24 Compliance with Delivery Schedule & Purchase Orders

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

3.25 Minimum Order

Minimum order shall be 22 tons.

3.26 Ordering Timeliness

Orders must be placed before 2 PM. Any orders placed after 2 PM shall be deemed as being placed the next business day.

3.27 Holidays/Weekends

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

3.28 Prevention of Contamination

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

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

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

3.29 Acceptance

The salt may be rejected if it fails to conform to any of the requirements of *Terms and Conditions, Road Salt (Lot I), Treated Salt (Lot II – Type 1 and Lot III – Type 2), and/or Emergency Standby Road Salt (Lot IV)*.

3.30 Weight Tickets

All shipments of bulk salt shall be accompanied by a weight ticket of a licensed weigh master indicating the producer, net weight of the delivery, and in the case of bulk delivery, the stockpile source. The certification must bear the weigh master’s signature; weights shall be recorded from a scale equipped with a weight printing device. Handwritten weights are not acceptable.

3.31 Delivery Timetable

Completed delivery, at the latest, is required as follows (see Section 3.31.1 – *Delivery Time Table Example* for more information):

<u>Orders Placed on</u>	<u>600 Tons or Less</u>	<u>601 - 800 Tons</u>	<u>801 -1000 Tons</u>	<u>Over 1000 Tons</u>
Monday	Thursday	Friday	Monday	200 Tons/Day/Location
Tuesday	Friday	Monday	Tuesday	200 Tons/Day/Location
Wednesday	Monday	Tuesday	Wednesday	200 Tons/Day/Location
Thursday	Tuesday	Wednesday	Thursday	200 Tons/Day/Location
Friday	Wednesday	Thursday	Friday	200 Tons/Day/Location

Contractor is required to deliver orders of 600 tons or less within three (3) Business Days. Contractor will be required to deliver a minimum of 200 tons per day after the initial 600-ton delivery. Authorized Users are advised not to place orders that exceed their maximum storage capacity. Multiple orders placed for the same delivery site that overlap will be viewed as a single order, still subject to the overall 200 tons per day minimum delivery.

3.31.1 Delivery Time Table Example

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

<u>Order Placed on</u>	<u>Thursday Delivery</u>	<u>Friday Delivery</u>	<u>Monday Delivery</u>	<u>Tuesday Delivery</u>	<u>Wednesday Delivery</u>
Monday	600 tons	200 tons	200 tons	200 tons	200 tons

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

3.32 Delivery Rate Guarantees/Exceptions

The guaranteed delivery in number of Business Day(s) required to make delivery after receipt of a Purchase Order shall be applicable in accordance with Section 3.31 - *Delivery Timetable*, and the Contractor is obligated to honor same from September 1 through May 31 of each year. However, from June 1 through August 31 of each year, delivery shall be at the discretion of the Contractor.

Contractor shall notify the Authorized User and OGS Procurement Services promptly regarding anticipated performance issues such as low supply, late delivery, lack of Product, and insufficient hauling capability. Failure by the Contractor to do so may result in liquidated damages and/or a buy against in accordance with Section 3.33 - *Liquidated Damages* and Section 3.35 - *Buy Against*.

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

3.33 Liquidated Damages

During the period September 1 through May 31, deliveries that do not meet the daily delivery tonnage requirements and/or the established order completions period specified, shall be considered cause for interruption of the proper implementation of the State's winter roadway safety. If it is determined that the interruption is caused by non-performance or negligence on the part of the Contractor, OGS Procurement Services and the Contractor presume that in the event of any such delay, the amount of damage that is sustained from a delay in daily delivery tonnage requirements and/or the established order completions period specified, is the greater of either:

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

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

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

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

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

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

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

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

3.34 On Ground/Delivered Inventory

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

- October 1, 2019 - 50% of filed requirement for awarded counties
- November 1, 2019 - 70% of filed requirement for awarded counties

After November 1, 2019, the Contractor is obligated to maintain inventories adequate to provide deliveries as requested in the time frames and quantities requested. Any failure by the Contractor to deliver pursuant to contract terms may result in a "buy against" to that Contractor in accordance Section 3.35 - *Buy Against* below.

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

If at any time during the contract period, extenuating circumstances arise, and it is determined by the Office of General Services that the Contractor does not have adequate inventory, award may be made at the discretion of the Office of General Services to another Bidder.

3.35 Buy Against

Contractors must supply Product in accordance with the terms of the Contract and instructions on Purchase Orders. In the event of the Contractor's failure to deliver in accordance with Contract requirements, purchase of the undelivered quantity from the Emergency Standby Contract (Lot IV) or the open market at the Contractor's expense may be authorized by OGS. Such authorized purchases will result in chargeback of the cost above the Contract price to the Contractor who fails to comply with delivery terms. The Authorized User must make OGS Procurement Services aware of the non-delivery and allow OGS Procurement Services to ascertain if immediate delivery can be made by the Contractor prior to obtaining authorization from OGS Procurement Services to make an emergency standby purchase or a purchase on the open market.

If open market Treated Salt is not readily available, the Authorized User at their discretion may purchase Road Salt, in lieu of Treated Salt, for the undelivered quantity from the Emergency Standby Road Salt Contract (Lot IV), and if not available through the Emergency Standby Contract, from the open market. Any price difference above the Contract price of Treated Salt (Lot II and/or Lot III) will be deducted from future payments, or billed to the Treated Salt Contractor. The Contractor of the Road Salt in this case may not be the non-performing Contractor of the Treated Salt (Lot II and/or Lot III). The Authorized User must obtain authorization to use this option also from OGS Procurement Services.

3.36 Invoices

Contractor invoices must include detailed line item information to allow Authorized Users to verify that delivered pricing matches the correct price on the date of order.

3.37 Report of Contract Purchases

Contractor shall furnish monthly reports containing total sales for both State agency and authorized non-state agency contract purchases no later than ten (10) days after the close of each calendar month. If the Contract period begins or ends in a fractional portion of a reporting month, only the actual Contract sales for this fractional period should be reported in the monthly report.

The report is to be submitted electronically via e-mail in Microsoft Excel to the Office of General Services Procurement Services to the attention of the individual listed on the front page of the Contract Award Notification. The report shall also be submitted to the Snow & Ice Program Manager at NYSDOT and the OGS OMWBE Minority Business Specialist. The report shall reference the Contract Group Number, Award Number, Contract Number, Sales Period, and Contractor's name.

The *Delivery Report* form contains the **minimum** information required. Additional related sales information, such as detailed Authorized User purchases may be required by OGS and must be supplied upon request. Failure to submit reports on a timely basis, and in the format provided by OGS, shall be considered poor performance in accordance with Section 3.38 - *Poor Performance* and may result in Contract cancellation and designation of Contractor as non-responsible.

3.38 Poor Performance

Authorized Users should notify OGS Procurement Services Customer Services promptly if the Contractor fails to meet the requirements of this Contract or if Contractor's performance is otherwise unsatisfactory to the Authorized User. Notification should be made to:

Office of General Services Procurement Services
38th Floor Corning Tower
Empire State Plaza
Albany, NY 12242
Customer Services E-mail: customer.services@ogs.ny.gov
Telephone: (518) 474-6717 / Fax: (518) 474-2437

3.39 Disposition of Damages, Etc.

The Office of General Services has the right to determine the disposition of any rebates, settlements, restitution, liquidated damages, etc. which arise from the administration of this Contract.

3.40 Extension of Use

These contracts may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State (the lead Contracting 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.

3.41 Non-State Agencies Participation in Centralized Contracts

New York State political subdivisions and others authorized by New York State law may participate in 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 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. Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to OGS Procurement Services Customer Services at (518) 474-6717.

3.42 Emergency Purchasing

In the event that a disaster emergency is declared by Executive Order under Section 28 of Article 2-B of the Executive Law, or that the Commissioner determines pursuant to his/her authority under Section 163(10)(b) of the State Finance Law that an emergency exists requiring the prompt and immediate delivery of products or services, the Commissioner reserves the right to obtain such products or services from any source, including but not limited to this contract, as the Commissioner in his/her sole discretion determines will meet the needs of such emergency. Contractor shall not be entitled to any claim or lost profits for products or services procured from other sources pursuant to this paragraph.

3.43 New York State Statewide 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 is currently on PeopleSoft Financials version 9.0 Bundle 18, operating on PeopleTools version 8.49.33. The State is planning to upgrade to PeopleSoft Financials version 9.2 sometime in 2015. SFS supports requisition-to-payment processing and financial management functions.

The State is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure goods and services in SFS. This application provides catalog capabilities. Vendors with centralized contracts have the ability to provide a "hosted" or "punch-out" catalog that integrates with SFS and is available to Authorized Users via a centralized eMarketplace website. There are no fees required for a Vendor's participation in the catalog site development or management. Upon completion and activation of an on-line catalog, State agencies will process their orders through the SFS functionality and other Authorized Users can access the catalog site to fulfill orders directly.

The State is also implementing the PeopleSoft Inventory module in the near future to track inventory items within the item master table. Further information regarding business processes, interfaces, and file layouts may be found at: <http://www.sfs.ny.gov> and <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

3.44 Use of Recycled or Remanufactured Materials

New York State supports and encourages vendors to use recycled, remanufactured or recovered materials in the manufacture of products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the product or packaging unless such use is precluded due to health or safety requirements or product specifications contained herein. Refurbished or remanufactured components or products are required to be restored to original performance and regulatory standards and functions and are required to meet all other requirements of these contracts. Warranties on refurbished or remanufactured components or products must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment. See Appendix B, § 13 *Remanufactured, Recycled, Recyclable or Recovered Materials*.

3.45 Mercury Added Consumer Products

Contractor agrees that it will not sell or distribute any products containing elemental mercury for any purpose under this contract.

3.46 Environmental Attributes and NYS Executive Order Number 4

New York State is committed to environmental sustainability and endeavors to procure products with reduced environmental impact. One example of this commitment may be found in Executive Order No. 4 (*Establishing a State Green Procurement and Agency Sustainability Program*), which imposes certain requirements on state agencies, authorities, and public benefit corporations when procuring commodities, services, and technology. More information on Executive Order No. 4, including specifications for offerings covered by this Contract, may be found at <http://ogs.ny.gov/EO/4/Default.asp>. State entities subject to Executive Order No. 4 are advised to become familiar with the specifications that have been developed in accordance with the Order, and to incorporate them, as applicable, when making purchases under this Contract.

3.47 "OGS or Less" Guidelines

"OGS or Less" Guidelines do not apply to this contract.

SECTION 4: ROAD SALT (Lot I)

4.1 Detailed Specifications – Road Salt (Crushed & Solar), Type A

It is the intent of this specification to describe sodium chloride (ASTM D632 Type 1, Grade 1 or the latest revision thereof) crushed rock salt and/or solar salt, to be used for snow and ice control. Bids for both rock salt and solar salt will be allowed in the following Counties ONLY: **Bronx, Kings, New York, Queens, Richmond, Nassau, Rockland, Suffolk, and Westchester**. For all remaining counties, rock salt only will be allowed.

4.1.1 Chemical Composition

Shall be not less than 95% sodium chloride. Percent of sodium chloride shall be determined in accordance with ASTM D632 or the latest revision thereof.

4.1.2 Size Grading – Rock Salt

The salt, when tested in accordance with ASTM D632* or the latest revision thereof, shall conform to the following requirements for particle size distribution:

Sieve Size	Percent Passing **
1/2" - (12.5 MM)	100
3/8" - (9.5 MM)	95 - 100
No. 4 - (4.75 MM)	20 - 90
No. 8 - (2.36 MM)	10 - 60
No. 30 - (600 MICRONS)	0 - 15

* A drying temperature of 110°C ± 5°C may be used.

** Tolerance of 5 percentage points on the maximum value of the range for each sieve except 1/2" (12.5 mm) and 3/8" (9.5 mm) sizes, on which no tolerance will be allowed.

4.1.3 Size Grading – Solar Salt

The solar salt, when tested in accordance with ASTM D632* or the latest revision thereof shall conform to the following size for particle size distribution:

Sieve Size	Percent Passing **
3/4" - (19.05 MM)	100
1/2" - (12.5 MM)	99-100
3/8" - (9.5 MM)	95-100
1/4" - (6.35 MM)	65-90
No. 4 - (4.75 MM)	20-80
No. 8 - (2.36 MM)	10-30
No. 30 - (600 MICRONS)	0-15

* A drying temperature of 110°C ± 5°C may be used.

** Tolerance of 5 percentage points on the maximum value of the range for each sieve except 1/2" (12.5 mm) and 3/8" (9.5 mm) sizes, on which no tolerance will be allowed.

4.1.4 Moisture Content (Crushed Rock Salt)

Moisture content upon delivery **shall not exceed 1.5%*** when determined as follows:

$$\% \text{ Moisture} = \frac{(W^1 - W^2)}{(W^1)} \times 100$$

W¹ = initial weight of sample

W² = weight of sample after drying to a constant weight at 110°±5°C.

* Procedure shall be in accordance with American Water Works Association B200-88, Sec. 4.3. A tolerance of 0.5% will be allowed before a deduction is assessed.

4.1.5 Moisture Content (Solar Salt)

Moisture content upon delivery **shall not exceed 2.5%*** when determined as follows:

$$\% \text{ Moisture} = \frac{(W^1 - W^2)}{(W^1)} \times 100$$

W¹ = initial weight of sample

W² = weight of sample after drying to a constant weight at 110°±5°C.

* Procedure shall be in accordance with American Water Works Association B200-88, Sec. 4.3. A tolerance of 0.5% will be allowed before a deduction is assessed.

4.1.6 Inhibitor Treatment

Salt shall be treated with an anticaking conditioner. The quantity of inhibitor used shall be in the range of 0.1 to 0.2 lbs/ton. **Potential Contractors shall supply with their bid a description of the inhibitor treatment used, quantity of inhibitor used per ton of salt, method of determining the presence of the treatment and information relative to the solubility and photodecomposition of the treating agent.** Potential harm to the ecology caused by inhibitor treatment may be cause for rejection of a bid.

Salt delivered in a lumpy condition which requires reprocessing in order to make it usable shall be cause for rejection of the entire delivery, with a replacement delivery to be made at no additional charge to the agency or political subdivision.

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

4.1.7 Sampling

Sampling shall be done in accordance with current ASTM D632 or the latest revision thereof. OGS, or any of its authorized representatives, reserves the right to take samples from the Contractor's stockpile, transfer point or from shipments at the point of destination.

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

4.1.8 Price Deductions

No price deduction is to be assessed unless the proper analysis and test procedures are followed.

If the Contractor consistently delivers salt found to be above 2% moisture content for rock salt or 2.5% moisture content for solar salt, or consistently not conforming to the gradation requirements, the contract shall be subject to cancellation.

Moisture – Rock Salt

If, after delivery the moisture content is found to be above 2.0%, a price deduction for moisture content will be made from the delivered bid price based on the following formula:

$$\text{Reduced price per ton} = \text{delivered contract price per ton} \times (1.02 - 2X)$$

where X = moisture content of the sample (expressed as the decimal equivalent of the percentage of the original sample weight to the nearest 1%).

Moisture – Solar Salt

If, after delivery the moisture content is found to be above 2.5%, a price deduction for moisture content will be made from the delivered bid price base based on the following formula:

$$\text{Reduced price per ton} = \text{delivered contract price per ton} \times (1.03 - 2X)$$

where X = moisture content of the sample (expressed as the decimal equivalent of the percentage of the original sample weight to the nearest 1%).

Solar salt with a moisture content higher than 3% may be rejected.

Gradation (Particle Size Distribution)

If, after delivery, the gradation of the Salt is found to be out of tolerance a deduction from the price shall be made based on the following formula:

$$\text{Reduced price per ton} = \text{delivered contract price} \times (1.00 - X)$$

where X = the decimal equivalent of the total % out of gradation less the tolerance. The % out of tolerance for each sieve shall be to the nearest 1%. The total of the individual sieve tolerance deviations shall be used as X.

Contamination

If the Authorized User accepts contaminated salt as defined in Section 4.1.6 - *Inhibitor Treatment* for operational reasons, a 10% price deduction may be placed on the Contractor by the Authorized User after consultation with the Contractor and OGS Procurement Services.

AGENCIES WILL SUBMIT TO OGS SUPPORTING DOCUMENTATION FOR DELIVERY PRICE DEDUCTION. OGS PROCUREMENT SERVICES WILL REVIEW AND WILL HAVE FINAL APPROVAL AS TO DELIVERY DEDUCTION APPLIED.

Calculations

Calculations performed relative to this specification shall be made using the rounding off method of "ASTM Recommended Practice E-29 for Designating Significant Places in Specified Limiting Values".

SECTION 5: TREATED SALT (Lot II – Type 1 and Lot III – Type 2)

5.1 Certification

An independent certified analysis conducted within the PAST YEAR showing compliance with all the mentioned requirements must be submitted with the bid.

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

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

5.2 Product Suitability 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.

5.3 Dye/Color

Product may be dyed a characteristic color that will allow ready visual identification of the product or any material treated with the product. Any dye used shall remain in solution without precipitation or leaching during all normal use and storage conditions. Dye utilized shall be non-toxic, non-staining, and environmentally benign.

Contractors will advise OGS Procurement Services as to the color the final product will be when applied to Authorized User's treated salt.

5.4 Toxic Substances – Material Safety Data Sheets

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

Example MgCl Chart

FREEZING POINT OF
MAGNESIUM CHLORIDE BRINE
EXAMPLE OF A 25% PRODUCT SUBMITTED

% By Weight	Specific Gravity	Freezing Point Celsius	Freezing Point Fahrenheit
5	1.013	-2.11	26.4
6	1.051	-3.09	25.0
7	1.060	-4.72	23.5
8	1.069	-5.67	21.8
9	1.070	-6.67	20.0
10	1.086	-7.83	17.9
11	1.096	-9.05	15.7
12	1.105	-10.5	13.1
13	1.114	-12.1	10.3
14	1.123	-13.7	7.3
15	1.132	-15.9	4.0
16	1.142	-17.6	0.4
17	1.151	-19.7	-3.5
18	1.161	-22.1	-7.7
19	1.170	-25.6	-12.2
20	1.180	-27.4	-17.2
21	1.190	-30.5	-23.0
22	1.200	-32.8	-27.0
23	1.210	-28.9	-20.0
24	1.220	-25.6	-14.0
**25	**1.230	** -23.3	** -10.0
26	1.241	-21.1	-6.0
27	1.251	-19.4	-3.0
28	1.262	-18.3	-1.0
29	1.273	-17.2	1.0
30	1.283	-16.7	3.0

25% EXAMPLE. YOUR INFORMATION MUST MATCH YOUR PRODUCT

5.5 Detailed Specifications - Treated Salt

(Granular Sodium Chloride Treated with Corrosion Inhibited Liquid Magnesium Chloride, Type 1 and Type 2)

It is the intent of this specification to describe a mixture of Sodium Chloride Type “A” crushed rock salt treated with corrosion inhibited liquid magnesium chloride product. The treatment is intended to enhance the performance of the product over untreated salt by reducing corrosiveness, improving low temperature performance, reducing bounce and scatter, preventing clumping, salt pile freezing and enhancing flowability. The treated salt is intended to be used to facilitate snow and ice prevention and removal on New York State roads and bridges. The end product treated salt will be categorized as either Type 1 (containing corrosion inhibited liquid magnesium chloride), or Type 2 (containing corrosion inhibited liquid magnesium chloride and an organic based performance enhancer [OBPE]). The defining characteristics of Type 1 and Type 2 treatment can be found summarized in the table *Example MgCl Chart*.

The finished product shall be composed of two primary constituents:

- Crushed rock salt as described and specified in Section A: *Sodium Chloride Type “A” Crushed Rock Salt Specifications*;
- A corrosion inhibited liquid magnesium chloride product described and specified in Section B: *Corrosion Inhibited Liquid Magnesium Chloride Product (with or without Organic Based Performance Enhancer, [OBPE])*.

The two components shall be mixed to produce a finished product as described in Section C: *Mixing the Sodium Chloride and Corrosion Inhibited Liquid Magnesium Chloride*.

The final product shall meet all the requirements described in Section D: *Final Product - Rock Salt treated with Corrosion Inhibited Liquid Magnesium Chloride*.

A separate *Vendor Certified Product Data Sheet* **MUST** be submitted for EACH of the two components being utilized by the vendor to produce the final product.

5.5.1 SECTION A: Sodium Chloride Type “A” Crushed Rock Salt Specifications

The crushed rock salt used in the preparation of the final product shall meet the following requirements;

- **Contamination**

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

- **Chemical Composition**

Shall be not less than 95% Sodium Chloride. Percent of Sodium Chloride shall be determined in accordance with current ASTM D632 or the latest revision thereof.

- **Size Grading**

The salt, when tested using sieves as described in ASTM C136* or the latest revision thereof, shall conform to the following requirements for particle size distribution:

Sieve Size	Percent Passing **
1/2" - (12.5 MM)	100
3/8" - (9.5 MM)	95 - 100
No. 4 - (4.75 MM)	20 - 90
No. 8 - (2.36 MM)	10 - 60
No. 30 - (600 Microns)	0 - 15

* A drying temperature of 110°C ± 5°C should be used.

** Tolerance of 5 percentage points on the maximum value of the range for each sieve except 1/2" (12.5 mm) and 3/8" (9.5 mm) sizes, on which no tolerance will be allowed.

- **Moisture Content**

Moisture content upon delivery shall not exceed 1.5%* when determined as follows:

$$\% \text{ Moisture} = \frac{(W^1 - W^2)}{(W^1)} \times 100$$

W¹ = initial weight of sample

W² = weight of sample after drying to a constant weight at 110°±5°C.

* Procedure shall be in accordance with ANSI/AWWA B200-03, *Moisture Determination*, or the latest revision thereof. A tolerance of 0.5% will be allowed before a deduction is assessed.

- **Sampling**

Sampling shall be done in accordance with ASTM D632 or the latest revision thereof. The Office of General Services, or any of its authorized representatives, reserves the right to take samples from the Contractor's stockpile, transfer point or from shipments at the point of destination.

The right is also reserved to consider truckloads of treated salt delivered by the Contractor to any one agency on a single day to be a single delivery. Penalties imposed because of deviation from specifications may be imposed on the total day's delivery.

5.5.2 SECTION B: Corrosion Inhibited Liquid Magnesium Chloride Product (with or without Organic Based Performance Enhancer, [OBPE])

Material used for this component of the finished product shall be a blend of Liquid Magnesium Chloride and an Organic Based Performance Enhancer (OBPE) component intended, amongst other things, to inhibit the corrosiveness of the product. The offered product shall meet all of the requirements for EITHER Type 1 or Type 2 listed in the table *Example MgCl Chart*. Bidder shall identify on the Vendor Supplied Data Sheet which type product is being offered. Product of either type must comply with the *General Chemical Requirements* below.

GENERAL CHEMICAL REQUIREMENTS:

Note Well: This section applies only to products offered that **do not** have a Beneficial Use Determination (BUD) from New York State Department of Environmental Conservation. **HOWEVER, ALL PRODUCTS OFFERED MUST CONTAIN 250 PPM OR LESS PHOSPHORUS, CALCULATED ON AN UNDILUTED BASIS, WITH OR WITHOUT BENEFICIAL USE DETERMINATION.**

Any product that contains constituents in excess of the following established total concentration limits may not be accepted. Results are stated as Parts Per Million (ppm). If product exceeds any of the following constituents then the Vendor shall identify the exception(s) and explain any mitigating circumstances. The State reserves the right to evaluate these exceptions and make a determination of product eligibility based on the best interests of the State.

Arsenic	5.00 ppm
Barium	75.00 ppm
Cadmium	0.20 ppm
Chromium	0.50 ppm
Copper	0.50 ppm
Cyanide	0.20 ppm

Lead	1.00 ppm
Mercury	0.05 ppm
Phosphorus	250.00 ppm
Selenium	5.00 ppm
Zinc	10.00 ppm

OTHER REQUIREMENTS:

PARAMETER	REQUIREMENT	
	LOT II - TYPE 1	LOT III - TYPE 2
Magnesium Chloride Concentration (w/v)	25% Min.	13 < 25%
pH	6.0 - 9.0	3.2 - 7.5
Eutectic (Freezing) Point	-20 Deg. F or Lower	-20 Deg. F or Lower
Total Solids (w/w After 1 Hr. @ 105°C)	No Requirement	35% Min.
Organic Based Performance Enhancer (OBPE)	No Requirement	12% Min.
Corrosivity	A 3% solution of the product shall have a corrosion value at least 70% less than that of a 3% solution of Sodium Chloride when tested by NACE Standard TM-01-69 as modified by the Clear Roads Qualified Products List: https://clearroads.org/qualified-product-list/ .	
Settleable Solids	Shall contain not greater than 1.0% (v/v) total settleable solids after being stored at 0 deg. F for 168 hours. If any solids are observed, 99% of those solids must pass through a #10 sieve.	Shall contain not greater than 4.0% (v/v) total settleable solids after being stored at 0 deg. F for 168 hours. If any solids are observed, 99% of those solids must pass through a #10 sieve.
Freezing Point Table	Bidder shall supply a table showing the Freezing Point vs Specific Gravity for varying dilutions of product in water, starting at 5% and continuing up to and including the percentage needed to reach the eutectic (freezing) point.	
Chemical Analysis	Bidder shall supply a certified analysis conducted within the last year from an independent laboratory* showing compliance with all the above listed requirements INCLUDING those listed in the <i>GENERAL CHEMICAL REQUIREMENT</i> . Exceptions to the requirements must be stated and the State reserves the right to reject the product.	
BOD5 (Biological Oxygen Demand)	No Requirement	Bidder shall provide BOD5 expressed in mg/l

Sampling to be done in accordance with ASTM D345 or the latest revision thereof. Product shall be tested using generally accepted industry standard analytical procedures as appropriate.

*Independent laboratory is defined as a laboratory that is certified to perform the required analyses by the United States Environmental Protection Agency (USEPA) and/or NYS Department of Health Environmental Laboratory Approval Program (ELAP).

5.5.3 SECTION C: Mixing the Sodium Chloride and Corrosion Inhibited Liquid Magnesium Chloride

The materials described in Section A: *Sodium Chloride Type “A” Crushed Rock Salt Specifications* and Section B: *Corrosion Inhibited Liquid Magnesium Chloride Product (with or without Organic Based Performance Enhancer, [OBPE])* shall be mixed as described in this Section (C) to produce the finished product. Mixing procedures shall comply with all requirements described in this section.

- The Office of General Services, or any of its authorized representatives, reserves the right to take samples from the Contractor’s stockpile or transfer point before the salt is mixed with the Corrosion Inhibited Liquid Magnesium Chloride. Both salt and liquid samples may be taken.
- The Contractor will thoroughly mix a minimum of 8 gallons of Corrosion Inhibited Liquid Magnesium Chloride per ton of salt.
- The Contractor will ensure a consistent, thorough mix (e.g. spray system, pugmill, conveyor) so that there is maximum coverage of the liquid on the salt crystals (loader mixing and stockpile injection methods are not acceptable) and will specify the mix method in the bid.
- Trucks must be weighed on certified scale with printout after loading the final product (salt and liquid mixture) and prior to delivery destination. The weight ticket shall include the net weight of the final product and the stockpile source. The certification must bear the Weighmaster’s signature. Handwritten weights are not acceptable.
- All shipments of finished product shall be accompanied by a ticket indicating the amount of Corrosion Inhibited Liquid Magnesium Chloride mixed in the finished product. This amount will be indicated on the ticket by Gallons. The number of gallons shall be recorded by a printing device or handwritten.
- The finished product shall be shipped via bulk delivery. Trucks delivering the mixture shall have the entire cargo area completely covered by a waterproof tarpaulin or similar sheeting material. Torn or ripped covers may be cause for rejection of the shipment.
- The State reserves the right to, at any time inspect the operation to take salt and liquid samples, to ensure that the proper amount of liquid is being applied and that the mix method is appropriate.

5.5.4 SECTION D: Final Product - Rock Salt treated with Corrosion Inhibited Liquid Magnesium Chloride

The Treated Salt shall meet the following requirements:

- **Contamination**
Upon inspection of delivered salt, the material shall be uniform in appearance, free flowing and free from visual evidence of foreign matter including, but not limited to, dirt, stone, chips, trash or any other material that could reasonably be expected to interfere with the use, handling or storage of the salt.
- **Flowability**
Properly stored product (covered or inside storage) shall be uniform and free flowing in a manner consistent with its intended use and shall show no objectionable clumping or caking.
- **Leaching**
Properly stored product (covered or inside storage) shall show no indication of objectionable leaching or separation of components to the extent that such condition produces adverse effects in the handling or usage of the product, or routine maintenance of the storage facility.
- **Chemical Composition**
Shall be not less than 91.2% Sodium Chloride. Percent of Sodium Chloride shall be determined as follows: Apparent total % Sodium Chloride content shall be determined in accordance with current ASTM D632 or the latest revision thereof. Magnesium and Calcium content shall be determined in accordance with ASTM E534 or the latest revision thereof and computed as % Magnesium Chloride and % Calcium Chloride respectively. The % Sodium Chloride shall then be computed as follows:

$$\% \text{ Sodium Chloride} = \% \text{ Apparent Sodium Chloride} - (\% \text{ Magnesium Chloride} + \% \text{ Calcium Chloride})$$

- **Size Grading**

The salt, when tested using sieves as described in ASTM C136* shall conform to the following requirements for particle size distribution:

Sieve Size	Percent Passing **
1/2" - (12.5 MM)	100
3/8" - (9.5 MM)	95 - 100
No. 4 - (4.75 MM)	20 - 90
No. 8 - (2.36 MM)	10 - 60
No. 30 - (600 Microns)	0 - 15

* A drying temperature of 110°C ± 5°C should be used.

** Tolerance of 5 percentage points on the maximum value of the range for each sieve except 1/2" (12.5 mm) and 3/8" (9.5 mm) sizes, on which no tolerance will be allowed.

- **Moisture Content**

Moisture content shall not exceed 4.8% when determined as follows:

$$\% \text{ Moisture} = \frac{(W^1 - W^2)}{(W^1)} \times 100$$

W¹ = initial weight of sample

W² = weight of sample after drying to a constant weight at 110°±5°C.

NOTE: Procedure shall be in accordance with ANSI/AWWA B200-03, *Moisture Determination*, or the latest revision thereof. A tolerance of 0.5% will be allowed before a deduction is assessed.

- **Sampling**

Sampling shall be done in accordance with ASTM D632 or the latest revision thereof. The Office of General Services, or any of its authorized representatives, reserves the right to take samples from the Contractor's stockpile, transfer point or from shipments at the point of destination.

The right is also reserved to consider truckloads of treated salt delivered by the Contractor to any one agency on a single day to be a single delivery. Penalties imposed because of deviation from specifications may be imposed on the total day's delivery.

- **Acceptance**

The treated salt may be rejected if it fails to conform to any of the requirements of this specification.

- **Non-complying Product – Price Deductions**

A non-complying product - price deduction is not to be assessed unless the proper analysis and test procedures are followed. If the Contractor consistently delivers treated salt found to be above 5.3% moisture content or consistently not conforming to the gradation requirements, the contract shall be subject to cancellation either in whole or in parts.

- **Non-complying Product – Price Deduction: Moisture**

If the moisture content of the treated salt is found to be above 5.3%, a deduction for moisture content will be made from the delivered bid price based on the following formula:

$$\text{Reduced Price/Ton} = \text{Delivered Contract Price/Ton} \times (1.053 - 2x)$$

where: X = Moisture content of the sample (expressed as the decimal equivalent of the percentage of the original sample weight to the nearest 1%)

- **Non-complying Product – Price Deduction: Gradation (Particle Size Distribution)**

If, after delivery, the gradation of the treated salt is found to be out of tolerance, a deduction from the price shall be made based on the following formula:

$$\text{Reduced Price/Ton} = \text{Delivered Contract Price} \times (1.00 - Y)$$

where: Y = the decimal equivalent of the total % out of gradation. The % out of tolerance for each sieve shall be to the nearest 1%. The total of the individual sieve tolerance deviations shall be used as Y.

- **Non-complying Product – Price Deduction: Contamination**

If the Authorized User accepts contaminated salt as defined in *Contamination* within Section D: *Final Product - Rock Salt treated with Corrosion Inhibited Liquid Magnesium Chloride*, for operational reasons, a 10% non-complying price deduction may be placed on the Contractor by the Authorized User after consultation with the Contractor and OGS.

- **Calculations**

Calculations performed relative to this specification shall be made using the rounding off method of “ASTM Recommended Practice E-29 for Designating Significant Places in Specified Limiting Values”.

SECTION 6: EMERGENCY STANDBY ROAD SALT (ROCK & SOLAR) – Lot IV

6.1 Emergency Standby Road Salt [Lot IV] Use Guidelines

It is the intention of the Emergency Standby Road Salt (Lot IV) to provide a limited use Contract to be utilized when emergency purchases of Road Salt are necessary (e.g. to be used for an impending storm when reserves are insufficient, and the primary Contractor is unable to make a delivery when needed by the Authorized User). This Contract will be a multiple award contract where one or more Contractors have an award for a county, resulting from Group 01800 – Invitation for Bids 23175, Road Salt, Treated Salt & Emergency Standby Road Salt.

There are two ways orders may be placed:

1. The Authorized User should contact the Contractor with the lowest price for the county and place an order. If the lowest price Contractor cannot fulfill the order, the Authorized User should contact the next low bidder and so on.

OR

2. The Authorized User may request a quote from all Contractors in the county and use the results to place a Purchase Order. The quote should address delivery time which may be a factor in the choice of Contractors.

State agencies and municipalities who filed requirements for the current Road Salt Contracts under Group 01800 (i.e. resultant Contract awards from Invitation for Bids 22955, 23134, and 23175) - Lot I may make purchases from this Contract if their current awarded Contractor for Group 01800 Lot I is unable to supply needed Product and may “chargeback” the difference in price to their original Contractor under the applicable Group 01800 Award.

These purchases may be made only after

1. **The Contractor has failed to perform, and**
2. **Authorization for the purchase has been granted by OGS Procurement Services.**

Special note regarding use of Lot IV contract awards: OGS Procurement Services may, on a case by case basis, approve emergency purchases to be made by state agencies and municipalities (i.e. Authorized Users) who filed requirements under Lots II and III (Treated Salt – Type 1 and Type 2 [see applicable sections from Invitation for Bids 22955, 23134, and 23175, and their resultant awards]). In these cases, Road Salt would be provided in lieu of Treated Salt. State agencies and municipalities may chargeback the difference in price to their original Treated Salt Contractor under Awards 22955, 23134, or 23175. The vendor providing emergency Road Salt in lieu of Treated Salt shall not be the non-performing supplier of the treated salt (Lot II and Lot III).

The difference between the current awarded price for Lot I (Road Salt) and the amount paid under Lot IV (Group 01800 – Award 23175) award invoices may be deducted or “charged back” by either:

1. Deducting the increased amount from the amount due to the Contractor on current Lot I Award,

OR

2. If an invoice is not due to the Contractor from a current Lot I Award, the Contractor under the applicable may be invoiced the amount due.

In either case, OGS Procurement Services should have already given authorization and should receive a copy of the transaction. Contract Authorized Users should document in detail the following:

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

This information should be emailed to Bailey Baleno at: Bailey.Baleno@ogs.ny.gov

Upon receipt, the information will be reviewed and the Contract Authorized User will be contacted by OGS. If permission is granted for a purchase, Contractor and Authorized User will be contacted via e-mail. The Authorized User must attach the e-mail granting permission and all documentation previously submitted to OGS (as referenced in the above 5 bullets) to their Purchase Order when processing for payment.

Special note regarding Quote/Price Calculation: After receiving OGS Procurement Services approval, Authorized Users should review all applicable Contractors (under Group 01800 – Award 23175, [Lot IV]) and place an order with the lowest priced Contractor for that county. If that Contractor cannot fill the order or cannot fill within the timeframe required, Authorized Users should contact the next low bidder and so on.

OR

The Authorized User may request a quote to all Contractors in the county and use the results to place a Purchase Order. The quote should address delivery time which may be a factor in the choice of Contractors.

Authorized Users may try to obtain lower prices by requesting a quote from all Contractors in their county. 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 specific need. There are no negotiations permitted following this quote process and prices cannot be changed once offered. Failure to adhere to all quote procedures may cause any non-State Agency Authorized User to lose the privilege of using State contracts. If for some reason the lowest quote is not taken, the Authorized User must 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 must be made a part of the procurement record. State Agencies are required to send copies of all worksheets along with the Purchase Order to the Office of the State Comptroller.

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.

6.2 Solar Salt

Both rock salt and solar salt are allowed for Lot IV in the following counties **ONLY**:

- Bronx, Kings, New York, Queens, and Richmond
- Dutchess
- Nassau
- Orange
- Putnam
- Rockland
- Suffolk
- Westchester

For all remaining counties, rock salt only is allowed.

6.3 Detailed Specifications - Road Salt, (Crushed & Solar) Type A

See the Detailed Specifications – Road Salt (Crushed & Solar), Type A contained in Section ROAD SALT (Lot I).

SECTION 7: PRICING PAGES

Please refer to the price pages' link published at the webpage for this contract at the OGS – Procurement Services website:

http://www.ogs.ny.gov/purchase/spg/lists/gp_018.asp