



Office of General Services Procurement Services

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Contract Award Notification

Title	:	Group 01800 – Road Salt, Treated Salt, & Emergency Standby Road Salt (Statewide) Classification Code(s): 12
Award Number	:	<u>23358</u> (Replaces Award 23315)
Contract Period	:	September 20, 2024 through August 31, 2025
Bid Opening Date	:	July 18, 2024
Date of Issue	:	September 20, 2024
Specification Reference	:	As Incorporated In The Invitation for Bids
Contractor Information	:	Appears on Pages 4 & 5 of this Award

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**Procurement Services values your input.
Complete and return "Contract Performance Report" at end of 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 Authorized User to purchase 50% of their filed requirement.

Automatic price increase becomes effective once deliveries exceed 120% of the Authorized User's filed requirement.

There are MBE and WBE participation goals totaling 30% for certain counties on this contract.
There are 0% SDVOB participation goals.

PR # 23358

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SECTION 1: INTRODUCTION

1.1 Contractor Information

NOTE: See individual contract items to determine actual awardees.

See separate document **PRICING** for contact information to place NYS Contract Orders.

Contract #	Contractor Name & Address	Contract Admin	Federal ID#/ NYS Vendor ID#
PC70460	American Rock Salt Co LLC PO Box 190 Mt. Morris, NY 14510	Phone #: 888-762-7258 Contact: Jamie A. McClain Title: Marketing Manager Email: Jamie.McClain@AmericanRockSalt.com	16-1516458 1000008297
<i>Contractor <u>does not</u> accept NYS Procurement Card</i>			

Contract #	Contractor Name & Address	Contract Admin	Federal ID#/ NYS Vendor ID#
PC70461 SB	Apalachee LLC 1423 Highland Ave Rochester, NY 14620	Toll Free #: 800-724-5037 Phone #: 585-442-4131 Contact: Ellen Pouthier Title: VP Sales Email: Sales@ApalacheeSalt.com	47-2089879 1100213604
<i>Contractor <u>does not</u> accept NYS Procurement Card</i>			

Contract #	Contractor Name & Address	Contract Admin	Federal ID#/ NYS Vendor ID#
PC70462	Atlantic Salt Inc 134 Middle Street, Suite 210 Lowell, MA 01852	Phone #: 978-453-4911 Contact: Donna Capillo Title: Assistant Corporate Secretary Email: DCapillo@EasternMinerals.com	13-2914699 1000026327
<i>Contractor <u>does not</u> accept NYS Procurement Card</i>			

Contract #	Contractor Name & Address	Contract Admin	Federal ID#/ NYS Vendor ID#
PC70463	Cargill Incorporated – Salt, Road Safety 24950 Country Club Blvd, Suite 450 North Olmsted, NY 44070	Toll Free #: 800-600-7258 Contact: Adam Donegan Title: Government Sales Lead Email: Salt_customer_careroadsafety@Cargill.com	41-0117680 1000048669
<i>Contractor accepts NYS Procurement Card orders for up to \$50,000.</i>			

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Contract #	Contractor Name & Address	Contract Admin	Federal ID#/ NYS Vendor ID#
PC70464	Compass Minerals America Inc 9900 W. 109 th St Overland Park, KS 66210	Phone #: 800-323-1641 x2 Contact: 913-344-9369 Title: Austin Hilbrands Email: Manager Highway Sales highwaygroup@CompassMinerals.com	48-1047632 1000031899
<i>Contractor accepts NYS Procurement Card for orders up to \$50,000.</i>			

Contract #	Contractor Name & Address	Contract Admin	Federal ID#/ NYS Vendor ID#
PC70465	Morton Salt Inc 444 West Lake Street, Suite 3000 Chicago, IL 60606	Phone #: 312-807-2384 Contact: Na-Tia Douglas Title: Senior Bid Analyst Email: NDouglas@MortonSalt.com	27-3146174 1100010394
<i>Contractor accepts NYS Procurement Card for orders up to \$50,000</i>			

Cash Discount, If Shown, Should be Given Special Attention.

Authorized Users should notify New York State 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 Authorized User should also be reported to OGS Procurement Services.

1.2 Overview

This Solicitation is issued by the New York State ("NYS") Office of General Services ("OGS"), Procurement Services for Road Salt, Treated Salt, and Emergency Standby Road Salt as specified herein for all Authorized Users eligible to purchase through this Solicitation.

1.3 Scope

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

State and eligible non-State agencies may participate.

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

(continued)

1.4 Estimated Quantities

The quantities listed for Road Salt and Treated Salt are based on the requirements filed for each using entity. The Contractor must furnish all quantities actually ordered at or below Contract prices. The anticipated dollar value of the award for this Invitation for Bids, based on historical purchases under previous awards, and filed requirements, is approximately **\$240,000,000.00** annually.

The individual value of each resultant Contract is indeterminate and will depend on the number of Contracts issued and the competitiveness of the pricing offered. See also, Appendix B, Estimated/Specific Quantity Contracts and Participation in Centralized Contracts.

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

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

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

1.5 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.

1.6 Recycled, Remanufactured and Energy Efficient Products

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

(continued)

1.7 Note to Authorized Users

When placing purchase orders under the contract(s), the authorized user should be familiar with and follow the terms and conditions governing its use which usually appears at the end of this document. The authorized user is accountable and responsible for compliance with the requirements of public procurement processes. The authorized user must periodically sample the results of its procurements to determine its compliance. In sampling its procurements, an authorized user should test for reasonableness of results to ensure that such results can withstand public scrutiny.

The authorized user, when purchasing from OGS contracts, should hold the contractor accountable for contract compliance and meeting the contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, authorized users are encouraged to seek improved pricing whenever possible.

Authorized users have the responsibility to document purchases, particularly when using OGS multiple award contracts for the same or similar product(s)/service(s), which should include:

- a statement of need and associated requirements,
- a summary of the contract alternatives considered for the purchase,
- the reason(s) supporting the resulting purchase (e.g., show the basis for the selection among multiple contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).

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SECTION 2: PRICING

For specific pricing information per county and salt type please refer to the price pages' link published at the webpage for this contract on the OGS Procurement Services website:

<https://ogs.ny.gov/procurement/ogs-centralized-awards-list>

SECTION 3: CONTRACT ADMINISTRATION

Contractor shall provide a sufficient number of Customer Service employees who are knowledgeable and responsive to Authorized User needs and who can effectively service the Contract. Contractor shall also provide an Emergency Contact in the event of an emergency occurring after business hours or on weekend/holidays.

Contractor shall provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Contractor must notify OGS within five Business Days if it's Contract Administrator, Emergency Contact, or Customer Service employees change, and provide an interim contact person until the position is filled. Changes shall be submitted electronically via e-mail to the OGS Contract Management Specialist.

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SECTION 4: TERMS AND CONDITIONS

4.1 Contract Term and Extensions

- A. Base Term. The Contract shall be in effect for a term of up to one (1) year. The Contract term shall commence after all necessary approvals and shall become effective September 1, 2024 or upon the date of OSC approval of the final executed documents, whichever is later, and the Contract term shall end August 31, 2025.
- B. Extensions: If mutually agreed between OGS and the Contractor, and subject to the approval of OSC, the Contract may be extended under the same terms and conditions for up to two (2) additional one (1) year extensions. . Whether the optional extensions are exercised is at the sole discretion of the State. Any extensions provided under this section shall apply in addition to any rights set forth in Appendix B, Contract Term - Extension.
- C. The Contract term provided for in this section shall extend 6 months beyond its termination date only for Authorized Users whose contracts must be registered with the Office of the New York City Comptroller. During the 6-month period the definition of Authorized User shall be deemed to refer only to Authorized Users whose contracts must be registered with the Office of the New York City Comptroller. This extension is in addition to any other extensions available under the Contract. The extension provided for in this paragraph shall be upon the then-existing terms and conditions; provided, however, during such extension an Authorized User, as defined in this paragraph, may agree to amend such terms and conditions solely to comply with changes in statutory requirements (e.g. changes in minimum, prevailing or living wages, or regulated services).

4.2 Short Term Extension

This section shall apply in addition to any rights set forth in Appendix B, *Contract Term – Extension*, and may be used either before the extension referenced in Appendix B, or after. In the event that OGS determines that a short term extension is in the best interests of the State, (e.g., a replacement Contract has not been issued, or an extended period is needed for Authorized Users to transition to another procurement method), any Contract let and awarded hereunder by the State may be extended unilaterally by the State for an additional period of up to 30 calendar days upon notice to the Contractor with the same terms and conditions as the original Contract and any previously approved modifications. With the concurrence of the Contractor, the extension may be for a period of up to 90 calendar days in lieu of 30 calendar days. However, unless otherwise noted in the extension notification or agreement, this extension automatically terminates should a replacement Contract be issued in the interim.

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4.3 Price

Pricing will be collected using Attachment 1 – *Pricing* in accordance with the Instructions tab listed within Attachment 1.

Price shall include all customs and duties and be net per ton, FOB destination designated on purchase order, including unloading of the bulk salt. Contract prices shall be firm except for price revisions permitted in accordance with the following clauses:

- Price Escalation Based on Exceeding 120% of Filed Requirement
- Price Escalation Based on Exceeding 130% of Filed Requirements
- Fuel Price Adjustment
- Price Adjustment for Renewals

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

4.3.1 Storage Fees

Submission of pricing for Storage Fees shall be collected on Attachment 1 - *Pricing*.

Price per ton is not to exceed \$3.60/ton to store salt on behalf of the Authorized User from September 1, 2025 until December 31, 2025. Salt stored from January 1, 2026 and beyond will be priced per ton, per month not to exceed \$8.00/ton.

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

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

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

A unit price increase of 10% will be allowed once quantities delivered are over 120% of an Authorized User's filed requirement. Once deliveries exceed 130% of an Authorized User's filed requirement the price increase will change to 15%.

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

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

Contractors will continue to deliver to all Authorized Users including up to 130% of the Authorized User's filed requirement. Failure to deliver may result in a "Buy Against" or a delivery deduction to the Contractor.

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4.3.3 Fuel Price Adjustment

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

- On a monthly basis an amount may be added or deducted from Contract pricing based on calculations made referencing prices posted in the "EIA Retail On-Highway Diesel Prices".
- The New England PADD 1A shall be the designated posting for the adjustments. If this source becomes unavailable, unworkable, unsuitable, or not reflective of the market conditions, then another source may be selected by the Commissioner of General Services in his/her sole discretion.
- Fuel Price adjustments will be applicable for deliveries of road salt & treated salt made during the Contract period. The fuel price adjustment shall be applied for the **date of delivery**.

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.

- The base rate used for calculating adjustments shall be the rate shown in the referenced EIA on the date of the Bid Opening indicated on the page 1 of this Invitation for Bids and adjustments will be permitted monthly.
- The monthly average will be arrived at by using the Monday prices for a given month as displayed in the EIA 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.

Fuel Price Adjustment calculations will be posted to the OGS website monthly:
<https://ogs.ny.gov/procurement/ogs-centralized-awards-list>.

EXAMPLE FUEL PRICE ADJUSTMENT INCREASE:

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

EXAMPLE FUEL PRICE ADJUSTMENT DECREASE:

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

Deliveries made to meet minimum filed requirement obligations after contract expiration on August 31, 2025 (where no extension has been granted) will apply the Fuel Price adjustment average for the month in which the product was delivered which will be calculated using the base price established for the Invitation for Bids.

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4.3.4 Additional Notes on Fuel Price Adjustment

Should postings become unavailable, not reflective of market conditions, or differ from current description and/or format, a posting determined by the Commissioner of General Services 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 an extension, the base rate for calculating adjustments will be the rate shown in the referenced EIA on the date of the next bid year's bid opening and for subsequent years additional extensions would follow this format. If there is no bid opening date for the next year, the base rate for calculating adjustments will be the rate shown in the referenced EIA one year after the last bid opening date. If the date is not a business date when the posting occurs, the next business day will be the date used for the adjustment.

4.3.5 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.

4.3.6 Price Reductions

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

4.4 Best Pricing Offer

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

(continued)

4.5 Price Structure

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

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

4.6 Ordering

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

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

4.7 Purchasing Card Orders

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

4.8 Minimum Order

The minimum order for this Contract is 22 tons.

4.9 Minimum/Maximum Purchase Obligations

Authorized Users are obligated to take a **minimum of 50%** of their filed requirements during the Contract period:

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

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 filed requirement amount, the awarded Contractor for the specific location will store salt for the Authorized User until December 31, 2025 for a one time/per ton storage fee not to exceed \$3.60/ton. If storage is necessary for an Authorized User from January 1, 2026 and beyond, the awarded Contractor may offer storage at a per month per ton rate.

(continued)

4.10 Invoicing and Payment

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

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

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

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

4.11 Delivery Terms

Road salt and treated salt shall be shipped bulk delivery as outlined below.

4.11.1 Delivery Schedule

The *Delivery Schedule* for this Solicitation is included as an Attachment. It is provided as a guide to indicate proposed delivery points and estimated annual requirements. Contractors shall be obligated to add to the delivery schedule any State Agency that submits filed requirement(s) on or before December 31 of the Contract term. 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 discretion only.

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

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.

(continued)

4.11.2 Compliance with Delivery Schedule & Purchase Orders

Delivery shall be made in accordance with instructions on the Purchase Order from each Authorized User 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 Authorized User and, if applicable, from OGS Procurement Services.

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

4.11.3 Ordering Timeliness

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

4.11.4 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 Authorized User mutually agree differently.

4.11.5 Prevention of Contamination

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

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

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

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

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

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

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

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

(continued)

4.11.6 Non-Complying Product – Price Deduction

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

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

4.11.7 Acceptance

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

4.11.8 Weight Tickets

All shipments of bulk salt shall be accompanied by a weight ticket of a licensed weigh master indicating the producer, net weight of the delivery, and in the case of bulk delivery, the stockpile source. Tickets should be completely filled out with hauler name (printed and signed) and AU rep name printed and signed (if AU rep is present at the time of delivery).

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

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

4.11.9 Delivery Timetable

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

- Contractor is required to deliver orders of 600 tons or less* within three (3) Business Days of Authorized User placing an order.
- Contractor will be required to deliver a minimum of 200 tons per day after the initial 600-ton delivery.
- Multiple orders placed for the same delivery site that overlap will be viewed as a single order, still subject to the overall 200 tons per day minimum delivery.

Authorized Users are advised not to place orders that exceed their maximum storage capacity.

See below, *Delivery Timetable Example* for more information.

Single Order Placed on	First 600 Tons or Less* Delivered by	601 - 800 Tons Delivered by	801 -1000 Tons Delivered by	Over 1000 Tons Delivered by
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

*if full amount of order is less than 600 tons

(continued)

Delivery Timetable Example

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

Order Placed on	Thursday Delivery	Friday Delivery	Monday Delivery	Tuesday Delivery	Wednesday Delivery
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 allow the supply of product on-hand to reach a level that is dangerously low. This can cause undue stress to the delivery network during high levels of demand, which can be compounded by inclement weather conditions that adversely impact transit times for deliveries.

4.11.10 Delivery Rate Guarantees/Exceptions

From September 1 through the following May 31 of each Contract term, Contractors shall be required to make deliveries within the timetables set forth in Section 6.10.9, *Delivery Timetable*. However, from June 1 through August 31 of each Contract term, delivery shall be at the discretion of the Contractor.

Contractor shall notify the Authorized User and OGS Procurement Services promptly regarding 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 6.10.11 - *Liquidated Damages* and Section 6.10.12 - *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.

4.11.11 Liquidated Damages

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

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

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

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

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

Liquidated damages may be applied to the Contractor by the Authorized User only after consultation with the Contractor and OGS Procurement Services. A request for the application of liquidated damages must be made to OGS 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.

4.11.12 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 a specific quantity (pre-determined by OGS), utilizing the Emergency Standby Provision 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 utilizing the Emergency Standby Road Salt Provision and if that option is not available, from the open market.

Any price difference above the Contract price of Treated Salt (Lot II and/or Lot III) will be deducted from future payments or billed to the 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.

4.12 Emergency Standby Road Salt Provision - Use Guidelines

It is the intention of the Emergency Standby Road Salt Provision to be utilized only when emergency purchases of Road Salt are determined to be necessary (e.g., to be used for an impending storm when reserves are insufficient, and/or if the primary Contractor is unable to make a delivery when needed by the Authorized User).

Emergency Standby Road Salt will be able to be provided by any Contractor that holds an active award with NYS OGS Procurement Services under any Group 01800 Road Salt, Treated Salt, & Emergency Standby Road Salt contract.

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These Emergency Standby Road Salt purchases may be made only after:

- A. The Contractor has failed to perform, or an Authorized User has a need to purchase due to an extenuating circumstance; and
- B. Authorization for the purchase has been granted by OGS Procurement Services

4.12.1 Lot I – Road Salt

In the event that a Contractor has failed to perform, State agencies and municipalities who filed requirements for the current Road Salt Contracts under Group 01800 – Lot I, may make purchases using the Emergency Standby Road Salt Provision.

If the current awarded Contractor for Road Salt is unable to supply needed Product, the Authorized User may “charge back” the difference in price to the awarded Contractor under the applicable Group 01800 – Lot I. For more information see section “Emergency Standby Road Salt Provision – Buy Against” below.

In the event that an Authorized User has been impacted by extenuating circumstances, approval to purchase using the Emergency Standby Road Salt Provision may be granted by OGS Procurement Services. This action will not result in a charge back to the awarded Contractor and is not dependent on the Authorized User having filed requirements for the current Road Salt Contracts under Lot I.

4.12.2 Lot II and Lot III – Treated Salt

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 Group 01800 – Lots II and III (Treated Salt – Type 1 and Type 2)

In these cases, Road Salt would be provided in lieu of Treated Salt. State agencies and municipalities may charge back the difference in price to their original Treated Salt Contractor under Group 01800, as applicable. For more information see section “Emergency Standby Road Salt Provision – Buy Against Process” below.

The Contractor providing Emergency Standby Road Salt in lieu of Treated Salt shall not be the non-performing supplier of the Treated Salt (Lot II and Lot III).

4.12.3 Emergency Standby Road Salt Provision – Ordering Process

After receiving OGS Procurement Services approval, Authorized Users should contact any Contractors awarded a NYS OGS Procurement Services contract under Group 01800 contracts to provide Road Salt.

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

4.12.4 Emergency Standby Road Salt Provision – Buy Against Process

In the event that the awarded Contractor has failed to perform, the difference between the current awarded price for Road Salt (Lot I) and the amount paid for the provision of salt under the Emergency Standby Road Salt Provision may either be deducted or “charged back” by the Authorized User in one of the following ways:

- a). When an invoice is due:

Authorized User may deduct the additional increased amount from the amount due to the Contractor in that invoice under the applicable current Lot I Award

- b). When an invoice is not due:

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The awarded Contractor will issue a credit or refund to the Authorized User for the difference in price between the amount owed under Lot I Award and the amount due to the Contractor

In either case, OGS Procurement Services will have already given authorization and receive a copy of the final invoice for the delivery. Authorized Users should document in detail the following:

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

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

Upon receipt, the information will be reviewed, and the 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 bullets) to their Purchase Order when processing for payment.

Tonnage purchased as a result of the application of the Emergency Standby Road Salt Provision will be deducted from the Authorized Users minimum filed requirement thereby reducing the final tonnage amount required to meet the 50% minimum purchase requirement.

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 documentation previously submitted to OGS (as referenced in the above bullets) to their Purchase Order when processing for payment.

4.13 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, 2024 - 35% of filed requirement for awarded counties
- November 1, 2024 - 50% of filed requirement for awarded counties

After November 1, 2024, 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 6.10.12 - *Buy Against*.

Upon request, 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.

4.14 NYS Financial System (SFS)

New York State is currently operating on an Enterprise Resource Planning (ERP) system, Oracle PeopleSoft software, referred to as the Statewide Financial System (SFS). SFS supports requisition-to-payment processing and financial management functions.

The State may be implementing additional PeopleSoft modules in the near future. Further information regarding business processes, interfaces, and file layouts currently in place may be found at: <http://www.sfs.ny.gov> and <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>

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4.15 Americans with Disabilities Act (ADA)

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

4.16 N.Y. State Finance Law § 139-I

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

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

Pursuant to N.Y. State Finance Law § 139-I, any bid by a corporate bidder containing the certification required above shall be deemed to have been authorized by the board of directors of such bidder, and such authorization shall be deemed to include the signing and submission of such bid and the inclusion therein of such statement as the act and deed of the bidder.

If the Bidder cannot make the required certification, such Bidder shall so state and shall furnish with the bid a signed statement that sets forth in detail the reasons that the Bidder cannot make the certification. After review and consideration of such statement, OGS may reject the bid or may decide that there are sufficient reasons to accept the bid without such certification.

4.17 Insurance

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

4.18 Report of Contract Usage

Contractor shall submit Attachment 8 – *Report of Contract Usage* including total sales to Authorized Users of this Contract by Contractor, and all authorized resellers, dealers and distributors, if any, **no later than 10 days after the first day of each month**. If the Contract period begins or ends in a fractional portion of a reporting period, only the actual Contract sales for this fractional period should be included in the monthly report.

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

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

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

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

4.19 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.

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

B. Form EEO 100 - Staffing Plan. Plan

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

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

The Contractor shall complete, and shall require each of its subcontractors to complete a Workforce Audit on a quarterly basis throughout the term of this Contract, by the 10th day of April, July, October, and January to report the actual workforce utilized during the previous quarter in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. Contractor shall coordinate with its subcontractors to ensure that all workers associated with this Contract are properly counted and reported. To prepare the report, Contractor and its subcontractors shall use the NYS Contract System Workforce Audit Module found at the following website:

<https://ny.newnycontracts.com>

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

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

IV. Contract Goals

- A. OGS hereby establishes an overall goal of 30% for MWBE participation, 15% for Minority-Owned Business Enterprises ("MBE") participation and 15% 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, Bronx, Cattaraugus, Chautauqua, Columbia, Dutchess, Erie, Herkimer, Kings, Monroe, Nassau, New York, Niagara, Oneida, Onondaga, Orange, Queens, Rensselaer, Richmond, Rockland, Saratoga, Schenectady, Suffolk, and Westchester.**

The total Contract goal can be obtained by utilizing any combination of MBE and /or WBE participation for subcontracting and supplies acquired under the Contract.

- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract goals established in clause IV-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address: <https://ny.newnycontracts.com/>. The MWBE Regulations are located at 5 NYCRR § 140 –

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145. Questions regarding compliance with MWBE participation goals should be directed to the Designated Contacts within the OGS Office of Business Diversity. Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

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

V. MWBE Utilization Plan

- A. In accordance with 5 NYCRR § 142.4, Bidders are required to submit a completed Utilization Plan on Form MWBE 100 with their bid.
- B. The Utilization Plan shall list the MWBEs the Bidder intends to use to perform the Contract, a description of the Contract scope of work the Bidder intends the MWBE to perform to meet the goals on the Contract, the estimated or, if known, actual dollar amounts to be paid to an MWBE. By signing the Utilization Plan, the Bidder acknowledges that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by New York State Certified MWBEs after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OGS.
- C. By entering into the Contract, Bidder/Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. When an MWBE is serving as a broker on the Contract, only 25 percent of all sums paid to a broker shall be deemed to represent the commercially useful function performed by the MWBE.
- D. OGS will review the submitted MWBE Utilization Plan and advise the Bidder of OGS acceptance or issue a notice of deficiency within 30 days of receipt.
- E. If a notice of deficiency is issued; Bidder agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the Bidder and direct the Bidder to submit, within five (5) business days of notification by OGS, a request for a partial or total waiver of MWBE participation goals on Form BDC 333.1. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- F. OGS may disqualify a Bidder's bid/proposal as being non-responsive under the following circumstances:
 - (a) If a Bidder fails to submit an MWBE Utilization Plan;
 - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
 - (c) If a Bidder fails to submit a request for waiver; or
 - (d) If OGS determines that the Bidder has failed to document good faith efforts.
- G. If awarded a Contract, Contractor certifies that it will follow the submitted MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in clause IV-A of this Section.
- H. Bidder/Contractor further agrees that a failure to submit and/or use such completed MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OGS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

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VI. Request for Waiver

- A. Prior to submission of a request for a partial or total waiver, Bidder shall contact the Designated Contacts listed on page 1 of this document for guidance.
- B. In accordance with 5 NYCRR § 142.7, a Bidder/Contractor who is able to document good faith efforts to meet the goal requirements, as set forth in clause VII below, may submit a request for a partial or total waiver on Form BDC 333.1, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its MWBE Utilization Plan. If a request for waiver is submitted with the MWBE Utilization Plan and is not accepted by OGS at that time, the provisions of clauses V(C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) business days of receipt.
- C. Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If OGS, upon review of the MWBE Utilization Plan and Monthly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE contract goals.

VII. Required Good Faith Efforts

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

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

VIII. Monthly MWBE Contractor Compliance Report

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

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

- B. When a Contractor receives a payment from a State agency, it is the Contractor's responsibility to pay its subcontractors and suppliers in a timely manner. On or after the first day of each month, the Contractor will receive an email or fax notification ("audit notice") indicating that a representative of its company needs to log-in to the NYSCS to report the company's MWBE subcontractor and supplier payments for the preceding month. The Contractor must also report when no payments have been made to a subcontractor or supplier in a particular month in the NYSCS. Once subcontractor and supplier payments have been entered into the NYSCS, the subcontractor(s) and supplier(s) will receive an email or fax notification advising them to log into the NYSCS to confirm that they actually received the reported payments from the Contractor. It is the Contractor's responsibility to educate its MWBE subcontractors and suppliers about the NYSCS and the need to confirm payments made to them in the NYSCS.
- C. To assist in the use of the NYSCS, OGS recommends that all Contractors and MWBE subcontractors and suppliers sign up for the following two webinar trainings offered through the NYSCS: "Introduction to the System - Vendor training" and "Contract Compliance Reporting - Vendor Training" to become familiar with the NYSCS. To view the training schedule and to register visit: <https://ny.newnycontracts.com/FrontEnd/TrainingList.asp>
- D. As soon as possible after the Contract is approved, Contractor should visit <https://ny.newnycontracts.com> and click on "Vendor Account Lookup" to identify the Contractor's account by company name. Contact information should be reviewed and updated if necessary by choosing "Change Info." It is important that the staff member who is responsible for reporting payment information for the Contractor be listed as a user in the NYSCS. Users who are not already listed may be added through "Request New User." When identifying the person responsible, please add "- MWBE Contact" after his or her last name (i.e., John Doe – MWBE Contact) to ensure that the correct person receives audit notices from the NYSCS. NYSCS Technical Support should be contacted for any technical support questions by clicking on the links for "Contact Us & Support" then "Technical Support" on the NYSCS website.
- E. If Contractor is unable to report MWBE Contractor Compliance via the NYSCS, Contractor must submit a Monthly MWBE Contractor Compliance Report on Form MWBE 102 to OGS, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: OGS OBD Office, 29th floor Corning Tower, Empire State Plaza, Albany, NY 12242. Phone: 518-486-9284; Fax: 518-486-9285.
- F. It is the Contractor's responsibility to report subcontractor and supplier payments. Failure to respond to payment audits in a timely fashion through the NYSCS, or by paper to OGS, may jeopardize future payments pursuant to the MWBE liquidated damages clause in clause IX below.

IX. Breach of Contract and Liquidated Damages

- A. Where OGS determines that the Contractor is not in compliance with the MWBE requirements of this Section, and the Contractor refuses to comply with such requirements, or if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, the Contractor shall be obligated to pay liquidated damages to OGS.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
 - 1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
 - 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

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

X. Fraud

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

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

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

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

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

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

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

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

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

4.21 Environmental Sustainability and NYS Executive Order Number 22

New York State is committed to environmental sustainability and endeavors to procure Products with reduced environmental impact. One example of this commitment may be found in Executive Order No. 22 (Leading By Example: Directing State Agencies to Adopt a Sustainability and Decarbonization Program), which imposes certain requirements on State Agencies, authorities, and public benefit corporations when procuring Products. More information on Executive Order No. 22, including specifications for offerings covered by this Contract, may be found at <https://ogs.ny.gov/greenyny/>. State entities subject to Executive Order No. 22 are advised to become familiar with the specifications that have been developed in accordance with the Order, and to incorporate them, as applicable, when making purchases under this Contract.

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4.22 Consumer Products Containing Mercury

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

4.23 Prohibition On Contracting For Certain Telecommunications And Video Surveillance Services Or Equipment

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

4.24 Overlapping Contract Products

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

4.25 Preferred Source Products

Section 162 of the State Finance Law requires that Authorized Users afford first priority to the Products of Preferred Source suppliers such as Corcraft (the marketplace name for the NYS Department of Corrections and Community Supervision, Division of Industries), New York State Preferred Source Program for People who are Blind (NYSPSP), and New York State Industries for the Disabled (NYSID), and others determined by law, when such Products meet the form, function and utility of the Authorized User. Some Products in the resultant Contract may be available from one or more Preferred Sources. An Authorized User must determine if a particular Product is approved for a Preferred Source and follow the requirements of State Finance Law § 162(3) or (4)(b), respectively, before engaging the Contractor.

4.26 Non-State Agencies Participation in Centralized Contracts

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

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

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4.27 Extension of Use

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

4.28 New Accounts

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

4.29 Drug and Alcohol Use Prohibited

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

4.30 Traffic Infractions

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

4.31 Contract Documents; Electronic Format

OGS encourages Contractor to submit all documents to OGS in an electronic format, including electronic copies of documents with original signatures. Documents requested by OGS should be submitted in the format specified by OGS. Contractor is responsible for retaining the original documents with original signatures that have been scanned and submitted electronically for the term of the contract and any extensions thereof, and for a period of six (6) years after the term of the contract has ended. Contractor shall submit such documents with original signatures to OGS upon request. If Contractor seeks to assign the contract during the term, Contractor shall provide all documents relating to the bid and contract that it has retained to the successor Contractor (assignee) upon OGS consent to the assignment.

4.32 New York State Buy American Salt Act

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

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