NEW YORK STATE | Office of General Services
Procurement Services

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

Contract Award Notification

Title	:	**Group 31503** **Bituminous Concrete Asphalt Mixtures** **(2026 VPP NYSDOT Specific Projects)** **(Federal & State Funds)** **Classification Code(s): 30**
Award Number	:	**23433**
Contract Period	:	**May 1 through December 31, 2026**
Bid Opening Date	:	**March 11, 2026**
Date of Issue	:	**May 6, 2026**
Specification Reference	:	**SPEC 951 dated December 2, 2025**
Contractor Information	:	**Appears on Page 4-9 of this Award**

Address Inquiries To:

Name : Spencer Koenig Title : Contract Management Specialist Phone : 518-473-9122 E-mail : OGS.sm.PS.Road.Materials@ogs.ny.gov		**Procurement Services** **Customer Services** Phone : 518-474-6717 E-mail : customer.services@ogs.ny.gov

Procurement Services values your input.
Complete and return "Contract Performance Report" at end of document.

Description

This Contract is issued by the New York State Office of General Services Procurement Services for Bituminous Concrete – Asphalt Mixtures as specified herein for the NYS Department of Transportation (NYSDOT).

The Contract is for specific NYSDOT projects ONLY.

Bituminous Concrete is a mixture of stone of various sizes and liquid material. The mixture is heated and proportioned in a bituminous concrete plant and compacted on a road in a warm state. Once the material cools, it becomes a hard durable material. Bituminous concrete is used for preventive maintenance activities which ensure that highways and bridges meet or exceed their optimum useful life.

This Award has 0% MBE, 0% WBE and 0% SDVOB goal requirements.

PR # 23433

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SECTION 1: INTRODUCTION

1.1 Contractor Information

NOTE: See individual contract items to determine actual awardees.

Contract #	Contractor Name & Address	Contract Admin/Emergency/Orders	Fed. ID #/ NYS Vendor ID #
PC70965 SB	Amherst Paving, Inc. 330 Meyer Road Amherst, NY 14226	Contact: Glen M. Willis Phone #: 585-993-7265 Title: Estimator Email: willisg333@gmail.com	16-1143301 1000015435
	Contractor does not accept orders using NYS Procurement Card		
	Business Hours: 8:00am – 5:00pm (M-F)		

Contract #	Contractor Name & Address	Contract Admin/Emergency/Orders	Fed. ID #/ NYS Vendor ID #
PC70966	Barrett Paving Materials Inc. 26572 NYS Rt 37 Watertown, NY 13601	Contact: Patrick Dewey Phone #: 315-788-2037 Title: Construction Manager Email: pdewey@barrettpaving.com	13-3003901 1000038867
	Contractor accepts NYS Procurement Card for orders up to $50,000		
	Business Hours: 7:00am – 4:30pm (M-F)		

Contract #	Contractor Name & Address	Contract Admin/Emergency/Orders	Fed. ID #/ NYS Vendor ID #
PC70967 SB	Broome Bituminous Products, Inc. 416 Prentice Rd. Vestal, NY 13850	Contact: Daniel W. Gates Phone #: 607-729-0498 Title: President & CEO Email: dgates@broomebit.com	16-1275720 1000015652
	Contractor accepts NYS Procurement Card for orders up to $50,000		
	Business Hours: 7:00am – 5:00pm (M-F)		

Contract #	Contractor Name & Address	Contract Admin/Emergency/Orders	Fed. ID #/ NYS Vendor ID #
PC70968	Callanan Industries, Inc 8 Southwoods Blvd, 4th Fl Albany, NY 12211	Contact: Michael Mastropietro Phone #: 518-374-2222 Title: Vice President Email: Mmastropietro@callanan.com	14-1539261 1000027416
	Contractor accepts NYS Procurement Card for orders up to $50,000		
	Business Hours: 7:00am – 5:00pm (M-F)		

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Contract #	Contractor Name & Address	Contract Admin/Emergency/Orders	Fed. ID #/ NYS Vendor ID #
PC70969	Cobleskill Stone Products Inc PO Box 220 Cobleskill, NY 12043	Contact: Shane J Strong Phone #: 518-234-0221 Title: VP of Sales Email: csp.shane@yahoo.com	14-1646795 1000006949
	Contractor does not accept orders using NYS Procurement Card		
	Business Hours: 5:30am – 5:30pm (Summer) **7:00am – 3:30pm (Winter)**		

Contract #	Contractor Name & Address	Contract Admin/Emergency/Orders	Fed. ID #/ NYS Vendor ID #
PC70970 SB	Concrete Applied Technologies Corp. dba CATCO 1266 Townline Rd Alden, New York 14004	Contact: Aaron Stisser Phone #: 716-651-4642 Title: Comptroller Email: AaronStisser@catco.com	16-1481049 1000008259
	Contractor accepts NYS Procurement Card for orders up to $50,000		
	Business Hours: 6:00am – 4:30pm (M-F)		

Contract #	Contractor Name & Address	Contract Admin/Emergency/Orders	Fed. ID #/ NYS Vendor ID #
PC70971	D&H Excavating Inc 11939 Rt 98 South Arcade, New York 14009	Contact: George DeWald Phone #: 716-492-4956 Title: Estimator/ Project Manager Email: george@dhexc.com	16-1459606 1000049326
	Contractor does not accept orders using NYS Procurement Card		
	Business Hours: 7:30am – 5:00pm (M-F)		

Contract #	Contractor Name & Address	Contract Admin/Emergency/Orders	Fed. ID #/ NYS Vendor ID #
PC70972 SB	D&H Paving LLC 485 Kennedy Rd Cheektowaga, New York 14227	Contact: Michael Vaccaro Jr. Phone #: 716-893-0066 Title: Member Email: michael@dhpaving.com	74-3204672 1100094020
	Contractor does not accept orders using NYS Procurement Card		
	Business Hours: 7:30am – 5:00pm (M-F)		

(continued)

Contract #	Contractor Name & Address	Contract Admin/Emergency/Orders	Fed. ID #/ NYS Vendor ID #
PC70973 SB	Dalrymple Gravel & Contracting Co, Inc. 990 County Rt 64 Elmira, New York 14903	Contact: Jeanne Buckbee Phone #: 607-737-6200 Ext 2016 Title: Contract Administrator Email: jbuckbee@dalgravel.com	16-0399910 1000007432
	Contractor does not accept orders using NYS Procurement Card		
	Business Hours: 8:00am – 4:30pm (M-F)		

Contract #	Contractor Name & Address	Contract Admin/Emergency/Orders	Fed. ID #/ NYS Vendor ID #
PC70974	Dolomite Products Company, Inc. 7610 County Rt 65 Hornell, New York 14843	Contact: Jonathan Cook Phone #: 607-968-1156 Title: Operations Manager Email: jcook@dolomitegroup.com	16-0410930 1000007433
	Contractor does not accept orders using NYS Procurement Card		
	Business Hours: 7:00am – 3:45pm (M-F)		

Contract #	Contractor Name & Address	Contract Admin/Emergency/Orders	Fed. ID #/ NYS Vendor ID #
PC70975	Heidelberg Materials Northeast LLC 4800 Jamesville Rd Jamesville, New York 13078	Contact: James LeMura Phone #: 315-727-8839 Title: Sales Manager Email: james.lemura@heidelbergmaterials.com	24-0649400 1100340116
	Contractor does not accept orders using NYS Procurement Card		
	Business Hours: 7:00am – 4:00pm (M-F)		

Contract #	Contractor Name & Address	Contract Admin/Emergency/Orders	Fed. ID #/ NYS Vendor ID #
PC70976 SB	Keeler Construction Co., Inc. 13519 West Lee Rd Albion, New York 14411	Contact: Mark D. Keeler Phone #: 585-589-4481 Title: President Email: mkeeler@keelerconstruction.com	16-0844121 1000039538
	Contractor does not accept orders using NYS Procurement Card		
	Business Hours: 7:00am – 5:00pm (M-F)		

(continued)

Contract #	Contractor Name & Address	Contract Admin/Emergency/Orders		Fed. ID #/ NYS Vendor ID #
PC70977	Kubricky-Jointa Lime, LLC	Contact:	John P. Davidson | Stacy C. Norton	92-3821088
	269 Ballard Rd	Phone #:	518-584-2421 | 518-886-7540	1100295899
	Wilton, New York 12831	Title:	Vice President/Secretary | Contract Admin	
		Email:	jdavidson@dacollins.com | snorton@dacollins.com	
	Contractor accepts NYS Procurement Card for orders up to $50,000			
	Business Hours: 8:00am – 5:00pm (M-F)			

Contract #	Contractor Name & Address	Contract Admin/Emergency/Orders		Fed. ID #/ NYS Vendor ID #
PC70978 SB	Luck Bros., Inc.	Contact:	Craig Amell	14-1509121
	73 Trade Rd	Phone #:	518-561-4321 x 20	1000001650
	Plattsburgh, New York 12901	Title:	Project Manager	
		Email:	craig@luckbros.com	
	Contractor does not accept orders using NYS Procurement Card			
	Business Hours: 8:00am – 4:00pm (M-F)			

Contract #	Contractor Name & Address	Contract Admin/Emergency/Orders		Fed. ID #/ NYS Vendor ID #
PC70979 SB WBE	Noel J. Brunell & Son, Inc.	Contact:	Emilie Simoneau	14-1456087
	7441 US Rt 9	Phone #:	518-561-1290	1000051434
	Plattsburgh, New York 12901	Title:	President	
		Email:	emilie@brunellasphalt.com	
	Contractor does not accept orders using NYS Procurement Card			
	Business Hours: 8:00am – 5:00pm (M-F)			

Contract #	Contractor Name & Address	Contract Admin/Emergency/Orders		Fed. ID #/ NYS Vendor ID #
PC70980 SB	Northern Asphalt, LLC	Contact:	Richard J Riccelli	46-5087422
	6131 E Taft Road	Phone #:	585-370-4002	1100176439
	North Syracuse, New York 13212	Title:	President	
		Email:	Richard.riccelli@riccellienterprises.com	
	Contractor does not accept orders using NYS Procurement Card			
	Business Hours: 8:00am – 5:00pm (M-F)			

(continued)

Contract #	Contractor Name & Address	Contract Admin/Emergency/Orders		Fed. ID #/ NYS Vendor ID #
PC70981 SB	Occhino Corp 2650 Seneca St Buffalo, New York 14224	Contact: Phone #: Title: Email:	Anthony Occhino 716-827-7000 Sr. Vice President tony@occhinopaving.com	16-0835935 1000055173
Contractor accepts NYS Procurement Card for orders up to $50,000				
Business Hours: 7:00am – 5:00pm (Every day)				

Contract #	Contractor Name & Address	Contract Admin/Emergency/Orders		Fed. ID #/ NYS Vendor ID #
PC70982	Peckham Road Corp. 438 Vaughn Rd Hudson Falls , New York 12839	Contact: Phone #: Title: Email:	Caleb Edelstein 518-792-3157 Assistant Secretary Cedel@peckham.com	13-3493213 1000006385
Contractor does not accept orders using NYS Procurement Card				
Business Hours: 7:00am – 3:00pm (M-F)				

Contract #	Contractor Name & Address	Contract Admin/Emergency/Orders		Fed. ID #/ NYS Vendor ID #
PC70983 SB	Seneca Stone Corporation 2105 S. Broadway Pine City, New York 14871	Contact: Phone #: Title: Email:	Sandra Strong 607-738-9033 Contract Administration sstrong@dalholding.com	16-1124518 1000007782
Contractor accepts NYS Procurement Card for orders up to $5,000				
Business Hours: 8:00am – 4:30pm (M-F)				

Contract #	Contractor Name & Address	Contract Admin/Emergency/Orders		Fed. ID #/ NYS Vendor ID #
PC70984 SB	Spallina Materials, inc. 8222 Routes 5 & 20 West Bloomfield, New York 14585	Contact: Phone #: Title: Email:	Todd Krenzer 585-658-2248 Quality Control Manager tkrenzer@spallinamaterials.com	20-4484008 1000008635
Contractor accepts NYS Procurement Card for orders up to $50,000				
Business Hours: 7:00am – 3:00pm (M-F)				

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Contract #	Contractor Name & Address	Contract Admin/Emergency/Orders		Fed. ID #/ NYS Vendor ID #
PC70985	Suit-Kote Corporation 1911 Lorings Crossing Rd Cortland, New York 13045	Contact: Phone #: Title: Email:	Donald Knickerbocker 315-238-7053 ext 306 Construction Manager dknickerbocker@suit-kote.com	16-1177189 1000007846
	Contractor does not accept orders using NYS Procurement Card			
	Business Hours: 7:30am – 4:30pm (M-F)			

Contract #	Contractor Name & Address	Contract Admin/Emergency/Orders		Fed. ID #/ NYS Vendor ID #
PC70986	Villager Construction, Inc. 425 Old Macedon Center Rd Fairport, New York 14450	Contact: Phone #: Title: Email:	Casey Smith 585-223-7697 Vice President csmith2@villagerci.com	16-1146699 1000015440
	Contractor does not accept orders using NYS Procurement Card			
	Business Hours: 7:00am – 5:00pm (M-F)			

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

Agencies should notify New York State 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 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.

1.3 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

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1.4 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).

1.5 Estimated Quantities

A Contract resulting from this Solicitation shall be an estimated quantity Contract. No specific quantities are represented or guaranteed, and the State provides no guarantee of individual Authorized User participation. The Contractor must furnish all quantities actually ordered at or below the Contract prices. The anticipated dollar value of the award for this Solicitation, based on historical purchases under previous awards, is approximately $181,000,000 annually. The individual value of each resultant Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered. Authorized Users will be encouraged to purchase from Contractors who offer the Products and pricing that best meet their needs in the most practical and economical manner. See Appendix B *Estimated/Specific Quantity Contracts* and *Participation in Centralized Contracts*.

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

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

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

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1.6 Definitions

Capitalized terms used in this Solicitation and the resultant Contract(s) shall be defined in accordance with Appendix B *Definitions*, or as below.

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

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

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

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

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

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

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

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

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

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SECTION 2: PRICING

2.1 Award Pricing and Superpave Asphalt Mixtures Tables

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

OGS Centralized Contracts List | Office of General Services

2.2 Price

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

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

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

The vendor is to furnish all necessary labor and equipment to complete the indicated projects except that the State will supervise and control the operation. Permanent pavement striping will be the responsibility of the State upon completion of the paving after the vendor has vacated each project site, unless otherwise indicated in Attachment 10 - Special Notes – NYSDOT Specific Projects. The equipment supplied to place the asphalt mixture shall meet the requirements of Section 404 of the New York State Department of Transportation Standard Specifications. The equipment supplied to place the tack coat shall meet the requirements of Section 407 of the New York State Department of Transportation Standard Specifications.

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

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

Price includes all required insurance coverage costs.

2.3 Asphalt Price Adjustment

General

a. Asphalt price adjustments allowed will be based on the February 2026 average of the F.O.B. terminal price per ton of unmodified PG 64S-22 binder without anti-stripping agent (base average F.O.B. terminal price) for the asphalt mix and tack coat.

   The February 2026 average is $638.000.

   The new monthly average terminal price will be determined by the New York State Department of Transportation based on prices of pre-approved primary sources of performance graded

(continued)

binder in accordance with the New York State Department of Transportation Standard Specification.

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

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

b. The new average F.O.B. terminal price will be determined based on the above F.O.B. terminal prices posted each month, hereafter known as the "Adjustment Date", during the contract period. However, asphalt price adjustments, in accordance with the formula below, will be effective for deliveries made on and after the first of the month following the adjustment date.

c. The unit prices per ton of asphalt mixture and per gallon of tack coat purchased from any award based on this specification will be subject to adjustment based on the following formula:

Asphalt Mixture

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

Tack Coat

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

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

New Monthly Average F.O.B. Terminal Price

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

Base Average F.O.B. Terminal Price

The average F.O.B. terminal price of unmodified PG 64S-22 binder without anti-stripping agent is as determined by the New York State Department of Transportation as of February 2026.

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Total % Asphalt plus Fuel

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

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

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

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

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

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

e. Asphalt price adjustments allowed by this contract shall be calculated and applied to the original prices. There will not be asphalt price adjustments unless the change amounts to more than $0.10 per ton from the original price for the asphalt mix and $0.0170 per gallon for the tack coat. In these instances, prices will revert back to the original prices.

f. All asphalt price adjustments will be computed to three decimal places.

g. Should these provisions result in a price structure which becomes unworkable, detrimental or injurious to the State or in prices which are not truly reflective of market conditions or which are deemed by the Commissioner to be unreasonable or excessive, and no adjustment in price is mutually agreeable, the Commissioner reserves the sole right upon ten days written notice mailed to the Contractor to terminate any contract resulting from this bid opening.

h. All asphalt price adjustments shall be published by the State and issued to all contract holders whose responsibility will be to attach the appropriate State notification (based on when the work was performed) to the payment invoice submitted to agency.

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Asphalt Price Adjustment for Asphalt Mixtures: Example

Example of *Positive* Price Adjustment – Asphalt Mixtures

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

*Monthly Price Adjustment for Item 404.09XX01 (**example**):*

Item 404.09XX01 Bid Price = $70.000 (example)

Base Average F.O.B Terminal Price = $638.000 (fixed for the duration of the contract)

New Monthly Average F.O.B. Terminal Price = $648.000 (example, it changes each month)

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

Price Adjustment	= (New Monthly Average F.O.B. Terminal Price	–	Base Average F.O.B. Terminal Price)	X	Total % Asphalt (Per Ton) Plus Fuel Allowance

($648.000 - $638.000) = 10.000 x 0.072 = **+$0.720 per ton**

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

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

Contract Price = Bid Price + Monthly Price Adjustment

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

Example of *Negative* Price Adjustment- Asphalt Mixtures

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

Monthly Price Adjustment for Item 404.09XX01 (example):

Item 404.09XX01 Bid Price = $70.000 (example)

Base Average F.O.B. Terminal Price = $638.000 (fixed for the duration of the contract)

New Monthly Average F.O.B. Terminal Price = $628.000 (example, it changes each month)

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

Price Adjustment	= (New Monthly Average F.O.B. Terminal Price	–	Base Average F.O.B. Terminal Price)	X	Total % Asphalt (Per Ton) Plus Fuel Allowance

($628.000 - $638.000) = -10.000 x 0.072 = **-$0.720 per ton**

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

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

Contract Price = Bid Price – Monthly Price Adjustment

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

(continued)

Asphalt Price Adjustment for Tack Coat: Example

(Example of Positive Price Adjustment – Tack Coat)

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

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

Item 407.0102 Bid Price = $2.000 (example)

Base Average F.O.B. Terminal Price = $638.000 (fixed for the duration of the contract)

New Monthly Average F.O.B. Terminal Price = $648.000 (example, it changes each month)

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

Tack Coat

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

($648.000 - $638.000) = ($10.000 /235) x 0.402 = **+$0.017 per gallon**

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

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

Contract Price = Bid Price + Monthly Price Adjustment

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

(Example of Negative Price Adjustment- Tack Coat)

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

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

Item 407.0102 Bid Price = $2.000 (example)

Base Average F.O.B. Terminal Price = $638.000 (fixed for the duration of the contract)

New Monthly Average F.O.B Terminal Price = $628.000(example, it changes each month)

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

Tack Coat

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

($628.000 - $638.000) = (-$10.000 /235) x 0.402 = **-$0.017 per gallon**

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

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

Contract Price = Bid Price – Monthly Price Adjustment

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

(continued)

2.4 Price Structure

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

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

(continued)

SECTION 3: PREVAILING WAGE RATES & NYS LABOR LAW § 220-I

3.1 NYS DOL Prevailing Wage Rates – Public Works and Building Services Contracts

Work being done under a resulting Authorized User agreement may be subject to the Prevailing Wage Rate provisions of the New York State Labor Law (see Appendix B *Prevailing Wage Rates – Public Works and Building Services Contracts and Section* 6.34 *NYS Labor Law § 220-i*). Such work shall be identified by the Authorized User (see Section 5.2 *Procurement Instructions for Authorized Users*). The actual bill rates for each Authorized User agreement will be established based upon the Prevailing Wage Case Number (PRC#) obtained by each requesting Authorized User.

Any federal or State determination of a violation of any public works law or regulation, or labor law or regulation, or any OSHA violation deemed "serious or willful" may be grounds for a determination of vendor non-responsibility, or suspension or termination of the Contract or Authorized User agreement.

The following also applies to this Contract.

A. **Worker Notification**. Labor Law § 220(3-a)(a)(ii) requires Contractors and Subcontractors to provide written notice to all laborers, workers or mechanics of the prevailing wage rate for their particular job classification on each pay stub. It also requires Contractors and Subcontractors to post a notice at the beginning of the performance of every public work Contract on each job Site that includes the telephone number and address for the Department of Labor and a statement informing laborers, workers or mechanics of their right to contact the Department of Labor if he/she is not receiving the proper prevailing rate of wages and/or supplements for his/her particular job classification. The required notification will be provided with each wage schedule and may be downloaded from https://dol.ny.gov/ or made available upon request by contacting the Bureau of Public Work at 518-457-5589. In the event that the required information will not fit on the pay stub, an accompanying sheet or attachment of the information will suffice.

B. **OSHA 10-Hour Construction Safety and Health Course**. Labor Law § 220-h requires that on all public work contracts of at least $250,000, all laborers, workers, and mechanics working on Site be certified as having successfully completed the OSHA 10-hour construction safety and health course. It further requires that the advertised Bids and contracts for every public work contract of at least $250,000 contain a provision of the requirement AND only applies to workers on a public work project that are required under Article 8 to receive the prevailing wage. Further information may be found at: https://dol.ny.gov/workforce-protections.

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

3.2 NYS Labor Law § 220-i

All Contractors and Subcontractors submitting Bids to an Authorized User for construction, demolition, reconstruction, excavation, rehabilitation, repair, installation, renovation, alteration, or custom fabrication work on Authorized User public work projects or private projects covered by Article 8 of the Labor Law ("covered projects") are required to register with the New York State Department of Labor (NYSDOL) under Labor Law § 220-i.

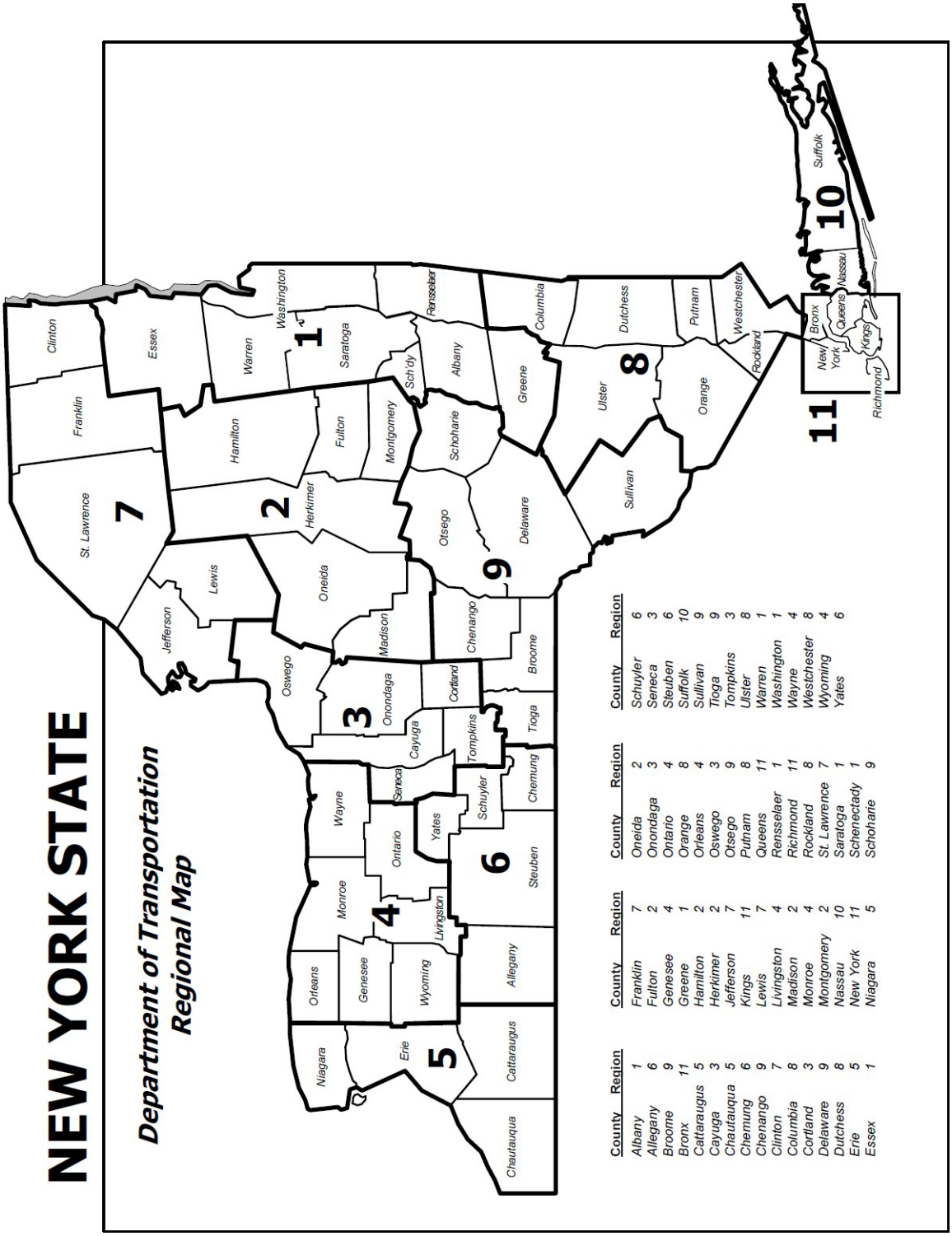
(continued)

Labor Law § 220-i (6) prohibits Contractors from bidding on public work and Subcontractors from commencing work unless the Contractor or Subcontractor is registered with NYSDOL. A Contractor is required to submit its Certificate of Registration with its Bid materials when responding to a Purchase Order that is subject to Labor Law § 220-i, as determined by the Authorized User. Such Contractor shall submit its Certificate of Registration to the Authorized User in its response to the Purchase Order. Failure to provide proof of registration may disqualify a Contractor from receiving an award to perform the work included in the Purchase Order. Subcontractors must also be registered as required by Labor Law § 220-i before commencing work on a covered project.

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

(continued)

SECTION 4: NYS MAP – NYSDOT REGIONS



County	Region
Albany	1
Allegany	6
Broome	9
Bronx	11
Cattaraugus	5
Cayuga	3
Chautauqua	5
Chemung	6
Chenango	9
Clinton	7
Columbia	8
Cortland	3
Delaware	9
Dutchess	8
Erie	5
Essex	1
Franklin	7
Fulton	2
Genesee	4
Greene	1
Hamilton	2
Herkimer	2
Jefferson	7
Kings	11
Lewis	7
Livingston	4
Madison	2
Monroe	4
Montgomery	2
Nassau	10
New York	11
Niagara	5
Oneida	2
Onondaga	3
Ontario	4
Orange	8
Orleans	4
Oswego	3
Otsego	9
Putnam	8
Queens	11
Rensselaer	1
Richmond	11
Rockland	8
St. Lawrence	7
Saratoga	1
Schenectady	1
Schoharie	9
Schuyler	6
Seneca	3
Steuben	6
Suffolk	10
Sullivan	9
Tioga	9
Tompkins	3
Ulster	8
Warren	1
Washington	1
Wayne	4
Westchester	8
Wyoming	4
Yates	6

(continued)

SECTION 5: CONTRACT ADMINISTRATION

5.1 Contract Administration

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

Bidder shall provide a minimum of one (1) dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Information regarding the Customer Service, Emergency Contact, and Contract Administrator shall be set forth in Attachment 5 – *Bidder Information Questionnaire*. Contractor must notify OGS within five (5) Business Days if it's Contract Administrator, Emergency Contact, or Customer Service employees change, and provide an interim contact person until the position is filled. Changes shall be submitted electronically via e-mail to the OGS Contract Management Specialist.

(continued)

SECTION 6: TERMS AND CONDITIONS

6.1 Contract Term and Extensions

A. Base Term. The Contract shall be in effect for a term of up to nine (9) months. The Contract term shall commence after all necessary approvals and shall become effective upon the date of OSC approval of the final executed documents, and the Contract term shall end December 31, 2026.

B. Extensions. At the State's option, and subject to the approval of OSC, the Contract may be extended for two (2) years, in increments as deemed to be in the best interest of the State. Whether the optional extensions are exercised is at the sole discretion of the State. A Contractor shall retain the right to decline a Contract extension offered under this section. Any Contract extension will be under the same terms and conditions, subject to any additional applicable statutory and policy requirements. Any extensions provided under this section shall apply in addition to any rights set forth in Appendix B *Contract Term – Extension*.

C. The Contract term provided for in this section shall extend six (6) months beyond its termination date only for Authorized Users whose contracts must be registered with the Office of the New York City Comptroller. During the six (6) month period the definition of Authorized User shall be deemed to refer only to Authorized Users whose contracts must be registered with the Office of the New York City Comptroller. This extension is in addition to any other extensions available under the Contract. The extension provided for in this paragraph shall be upon the then-existing terms and conditions; provided, however, during such extension an Authorized User, as defined in this paragraph, may agree to amend such terms and conditions solely to comply with changes in statutory requirements (e.g. changes in minimum, prevailing or living wages, or regulated services).

6.2 Short term Extension

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

6.3 Ordering

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

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

6.4 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.

(continued)

6.5 Minimum Order

There is no minimum order for this Contract.

6.6 Invoicing and Payment

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

The Contractor is required to provide the Authorized User with one (1) invoice for each Purchase Order at the time of delivery. The invoice must include detailed line item information to allow Authorized Users to verify that pricing at point of receipt matches the Contract price on the original date of order. At a minimum, the following fields must be included on each invoice:

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

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

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6.7 Quality Adjustment Factor (QAF; Quality Units)

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

QUALITY UNIT INDEX PRICES (QAF)	
Region	**Index Price ($/Quality Unit)**
1	$95
2	$105
3	$110
4	$105
5	$105
6	$95
7	$90
8	$140
9	$100
10	$125
11	$150

6.8 Product Delivery

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

6.9 NYS Financial System (SFS)

New York State is currently operating on an Enterprise Resource Planning (ERP) system, Oracle PeopleSoft software, referred to as the Statewide Financial System (SFS). SFS supports requisition-to-payment processing and financial management functions. Further information regarding business processes, interfaces, and file layouts currently in place may be found at: http://www.sfs.ny.gov and https://www.osc.ny.gov/state-agencies/gfo/chapter-iii/iii1-statewide-financial-system-sfs-overview.

(continued)

6.10 N.Y. State Finance Law § 139-l

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

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

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

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

The certification required above can be found on Attachment 2 – *NYS Required Certifications*, which Bidder must submit with its Bid.

6.11 Insurance

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

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

6.12 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 ten (10) days after the end of the contract period*. If the Contract period begins or ends in a fractional portion of a reporting period, only the actual Contract sales for this fractional period should be included in the report.

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

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

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 be terminated for failure to file the reports required under this Section.

6.13 Contractor Requirements and Procedures for Participation by New York State Certified Minority- and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women

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

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

I. New York State Law

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

II. General Provisions

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

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

C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, a finding of non-responsibility, breach of contract, withholding of funds, suspension or termination of the Contract, and/or such other actions or enforcement proceedings as allowed by the Contract and applicable law.

III. Equal Employment Opportunity (EEO)

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

(continued)

contracting State agency (the "Work") except where the Work is for the beneficial use of the Contractor.

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

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

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

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

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

2. Separate audits shall be completed by Contractor and all subcontractors utilized on this contract and the Contractor is responsible for ensuring timely submission of the Workforce Audit by their subcontractors.

3. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall complete the Workforce Audit and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall complete the Workforce Audit and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.

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

IV. Contract Goals

(continued)

A. For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers, or suppliers to Contractor. Contractor is, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at: https://ny.newnycontracts.com/. Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

B. Good Faith Efforts

Pursuant to 5 NYCRR § 142.8, evidence of good faith efforts shall include, but not be limited to, the following:

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

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

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

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

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

6. Other information deemed relevant to the request.

V. Fraud

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

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

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

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

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

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

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

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

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

6.15 Use of Recycled or Remanufactured Materials

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

6.16 Environmental Sustainability and NYS Executive Order Number 22

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

A. GreenNY Specifications.

A list of GreenNY specifications is located on the OGS website at https://ogs.ny.gov/greenny/approved-greenny-specifications. **Product Labeling per GreenNY Specifications**

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

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

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

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

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

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

6.17 Consumer Products Containing Mercury

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

6.18 Diesel Emission Reduction Act

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

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

6.19 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.

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6.20 Traffic Infractions

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

6.21 Contract Documents; Electronic Format

OGS requires Contractor to submit all documents to OGS in an electronic format, including electronic copies of documents that require original signatures. Documents requested by OGS should be submitted in the format specified by OGS, which may include a requirement for an electronic signature that has been generated by software (e.g., DocuSign or Adobe Acrobat Sign). Contractor is responsible for retaining all copies and originals (if applicable) of documents submitted to OGS for the term of the Contract and any extensions thereof, and for a period of six (6) years after the term of the Contract has ended. This requirement includes both electronic documents, and original paper documents with required original signatures that have been scanned and submitted electronically. Contractor shall submit such retained documents to OGS upon request. If Contractor seeks to assign the Contract during the term, Contractor shall provide all documents relating to the Bid and Contract that it has retained to the successor Contractor (transferee/assignee) upon OGS consent to the assignment.

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