



Contract Award Notification

Title	: Group 31555 Liquid Bituminous Materials (2023 VPP NYSDOT Specific Projects) (Federal & State Funds) Classification Code(s): 30
Award Number	: 23293
Contract Period	: April 1, 2023 through December 31, 2023
Bid Opening Date	: February 22, 2023
Date of Issue	: April 1, 2023
Specification Reference	: Spec 940 dated October 30, 2019
Contractor Information	: Appears starting on Page 3 of this Award

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

Description

Bituminous Materials as specified herein for the NYS Department of Transportation. The Contract is for specific NYSDOT projects ONLY.

The Contract includes various Liquid Bituminous Materials for specific DOT projects.

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

PR # 23293

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SECTION 1: INTRODUCTION

1.1 Contractor Information

NOTE: See individual contract items to determine actual awardees per project.

<u>Contract #</u>	<u>Contractor Name & Address</u>	<u>Contract Admin/Contact</u>	<u>Fed. ID #/ NYS Vendor ID #</u>
PC70044 SB	AnnSeal, Inc 130 Main St Johnson City, NY 13790	Contact: Nancy O'Brien Phone #: 607-797-3737 Title: President Email: nobrien@annseal.com	03-0435899 1000005228
Contractor <u>does not</u> accept NYS Procurement Card			
<u>Emergency or Weekends/Holidays</u>			
Phone #: 607-222-5815 Contact: Douglas Luke Email: dluke@annseal.com			
Business Hours: 8:00am – 5:00pm (M-F)			

<u>Contract #</u>	<u>Contractor Name & Address</u>	<u>Contract Admin/Contact</u>	<u>Fed. ID #/ NYS Vendor ID #</u>
PC70045 SB	Bothar Construction LLC 170 East Service Road Binghamton, NY 13901	Contact: James E. O'Brien Jr Phone #: 607-723-5012 x207 Title: Member Email: jimjr@botharconst.com	16-1570429 1000008391
Contractor <u>does not</u> accept NYS Procurement Card			
<u>Emergency or Weekends/Holidays</u>			
Phone #: 607-343-5704 Contact: James E. O'Brien Jr Email: jimjr@botharconst.com			
Business Hours: 8:00am – 5:00pm (M-F) & (Sa/Sun)			

<u>Contract #</u>	<u>Contractor Name & Address</u>	<u>Contract Admin/Contact</u>	<u>Fed. ID #/ NYS Vendor ID #</u>
PC70046	Gorman Bros., Inc 200 Church St Albany, NY 12202	Contact: Michael Ryan Phone #: 518-462-5401 Title: Manager of Contract Admin Email: mryan@gormanroads.com	14-0704840 1000013676
Contractor <u>does not</u> accept NYS Procurement Card			
<u>Emergency or Weekends/Holidays</u>			
Toll-Free # 800-332-7795 Phone #: 518-470-4203 Contact: Michael Ryan Email: mryan@gormanroads.com			
Business Hours: 8:30am – 4:30pm (M-F)			

<u>Contract #</u>	<u>Contractor Name & Address</u>	<u>Contract Admin/Contact</u>	<u>Fed. ID #/ NYS Vendor ID #</u>
PC70047 SB	Highway Rehabilitation Corp 2258 Route 22 Brewster, NY 10509	Contact: Christine Magee Phone #: 845-206-5777 Title: Vice President Email: chris@highwayrehab.com	22-2355196 1000057419
<i>Contractor <u>does not</u> accept NYS Procurement Card</i>			
<u>Emergency or Weekends/Holidays</u>			
Phone #: 845-721-6008 Contact: Terence Lucey Email: terry@highwayrehab.com			
Business Hours: 8:30am – 5:30pm (M-F)			

<u>Contract #</u>	<u>Contractor Name & Address</u>	<u>Contract Admin/Contact</u>	<u>Fed. ID #/ NYS Vendor ID #</u>
PC70048	Suit-Kote Corporation 1911 Lorings Crossing Rd Cortland, NY 13045	Contact: Michael Murphy Phone #: 315-238-7053 x350 Title: Sales Manager Email: mmurphy@suit-kote.com	16-1177189 1000007846
<i>Contractor <u>does not</u> accept NYS Procurement Card</i>			
<u>Emergency or Weekends/Holidays</u>			
Phone #: 607-591-9234 Contact: Joe Peronne Email: jperonne@suit-kote.com			
Business Hours: 7:30am – 4:30pm (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 Scope

The Solicitation is for various Liquid Bituminous Materials to be bid on for specific DOT projects, on a per project basis.

Below are descriptions of the various materials to be bid on for the various projects:

Chip Seal is a pavement preventive maintenance treatment which consists of single-sized stone embedded in a liquid bituminous material. The liquid bituminous material seals cracks in the existing pavement and the stone provides a high friction wearing surface.

Cold Recycling of bituminous concrete pavements is a corrective maintenance technique. The existing pavement is milled off for a depth of 3 to 4 inches (75mm to 100mm) a liquid bituminous material is added to the millings and the resulting mixture is placed and compacted on the milled surface. A new bituminous concrete sealing layer is added later. Existing cracks are eliminated, and the resulting pavement should last for many years.

Heater Scarification is a continuous multi-step process in which the existing hot mix asphalt (HMA) pavement surface is recycled using specialized equipment. The HMA pavement surface is heated causing the asphalt to soften. The softened asphalt surface is then immediately scarified and milled to a specified depth. The reclaimed asphalt pavement is then mixed with a recycling agent that rejuvenates the asphalt. The recycled mix is then placed and compacted back onto the roadway. A new bituminous concrete sealing layer is added later. Existing cracks are eliminated, and the resulting pavement should provide a longer life.

Joint and Crack Filler/Sealers are hot-poured liquid bituminous materials (rubberized asphalt; asphalt cement and polyester fibers; asphalt filler) used to fill and/or seal cracks in the surface of highway pavements. Some products incorporate recycled materials with up to 18% recycled content and up to 18% post-consumer content.

Micro-surfacing is a pavement preventive maintenance treatment which offers minor improvements to rideability and has excellent friction characteristics.

Conventional and Rubber Modified Paver Placed Surface Treatment is a preventive maintenance treatment used to preserve highway pavements. The treatment is a surface paving system, placed by a self-priming paver, where a modified emulsion tack coat is placed directly before the application of a conventional or rubber modified hot mix asphalt wearing course.

This Solicitation and ensuing contract provide an avenue for preventive maintenance activities which ensure that highways and bridges meet or exceed their optimum useful life.

Note: All scope changes are subject to the approval of the New York State Office of the State Comptroller as required by law.

1.3 Small, Minority and Women-Owned Businesses

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

1.4 Recycled, Remanufactured and Energy Efficient Products

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

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

1.5 Note to 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).

1.6 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 \$14,000,000 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.

SECTION 2: PRICING

2.1 List of OGS Items and Awardees

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

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

2.2 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.

SECTION 3: PREVAILING WAGE RATES

3.1 Prevailing Wage Rates – State and Federally Funded Public Works Contract

Work being bid is subject to the prevailing wage rate provisions of New York State Labor Law. See "Prevailing Wage Rates - Public Works and Building Services Contracts" in Appendix B, *OGS General Specifications*. 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, rejection of bid, suspension or termination of Contract.

Any provisions of NYS Labor Law that are in conflict with mandatory Federal-Aid construction contract compliance requirements are superseded. Any provisions of NYS Labor Law that are not in conflict with mandatory Federal-Aid construction contract compliance requirements or the Davis-Bacon Act but are more restrictive shall apply.

IMPORTANT NOTE: NYSDOT will provide a separate PRC # for each purchase from this contract where prevailing wage rates apply. The PRC # provided in this bid is for information and evaluation purposes only.

For access to the Department of Labor (DOL) Prevailing Wage Schedule, use the following link:

<https://applications.labor.ny.gov/wpp/showFindProject.do?method=showI>

For Prevailing Wage Updates, use the following DOL link:

<https://applications.labor.ny.gov/wpp/publicViewPWChanges.do?method=showI>

Links to schedule updates appear in the table at the bottom of the web page.

The Federal Wage Rate Charts are located on the web at: <http://www.wdol.gov/dba.aspx>. To retrieve the Federal Wage Rate Charts, referring to the next page's tables, enter the applicable WD# in the "Select DBA by number" field on the web page and click "Search".

3.1.1 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, may be downloaded from <https://www.labor.ny.gov/home/> 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.

3.1.2 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://www.labor.ny.gov/workerprotection/publicwork/PWContents.shtm>

3.1.3 Living Wage

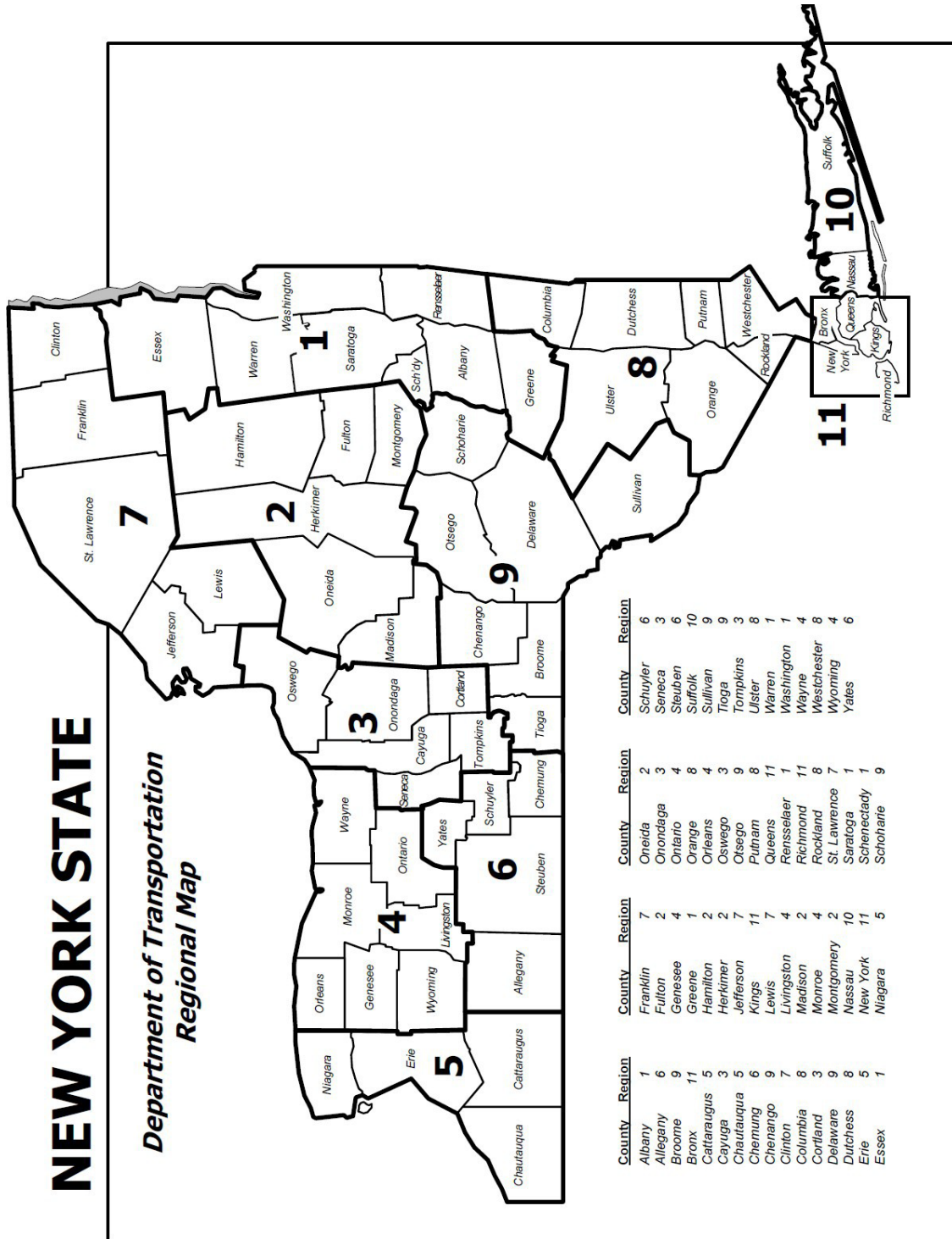
An Authorized User subject to a local law establishing a “living wage”, such as Section 6-109 of the New York City Administrative Code, is required to ensure the Contractor sought to be hired complies with such local law. If the pay rate(s) for a job title(s) is less than the local law “living wage,” 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.

COUNTY	WD #
Albany	NY2
Allegany	NY47
Bronx	NY3
Broome	NY4
Cattaraugus	NY8
Cayuga	NY36
Chautauqua	NY8
Chemung	NY5
Chenango	NY4
Clinton	NY6
Columbia	NY2
Cortland	NY42
Delaware	NY21
Dutchess	NY7
Erie	NY8
Essex	NY6
Franklin	NY35
Fulton	NY2
Genesee	NY29
Greene	NY2
Hamilton	NY46

COUNTY	WD #
Herkimer	NY31
Jefferson	NY9
Kings	NY3
Lewis	NY9
Livingston	NY30
Madison	NY15
Monroe	NY10
Montgomery	NY2
Nassau	NY12
New York	NY3
Niagara	NY11
Oneida	NY14
Onondaga	NY16
Ontario	NY32
Orange	NY7
Orleans	NY34
Oswego	NY38
Otsego	NY37
Putnam	NY25
Queens	NY3
Rensselaer	NY2

COUNTY	WD #
Richmond	NY3
Rockland	NY20
Saratoga	NY2
Schenectady	NY2
Schoharie	NY2
Schuyler	NY5
Seneca	NY40
St Lawrence	NY9
Steuben	NY18
Suffolk	NY12
Sullivan	NY7
Tioga	NY45
Tompkins	NY24
Ulster	NY7
Warren	NY39
Washington	NY2
Wayne	NY44
Westchester	NY17
Wyoming	NY41
Yates	NY33

SECTION 4: NYSDOT REGIONAL MAP



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/holidays.

Bidder shall provide a 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 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.

SECTION 6: TERMS AND CONDITION

6.1 Contract Term and Extensions

- A. Base Term. Notwithstanding the provisions of Appendix B Section 22, Contract Creation/Execution, the base contract term shall become effective upon the later of (i) April 1, 2023, or (ii) the date of OSC approval of the final executed documents and shall continue through and including December 31, 2023.
- 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 (1) additional two (2) year period. The Contract extension may be exercised on a month to month basis such as an additional three-month, six month, twelve month, or twenty-four-month period.

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 a replacement Contract has not been issued, 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 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, 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.

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 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; and
- Dates of Service (if applicable).

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

6.7 Product Delivery

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

Delivery shall also be made in accordance with instructions on Purchase Order from the Authorized User. If there is a discrepancy between the purchase order and what is listed on the contract, it is the Contractor's obligation to seek clarification from the Authorized User and, if applicable, from the Office of General Services, Procurement Services. Failure to furnish material as agreed upon with authorized representative or violation of shipping instructions, shall be cause for and entitles the State (1) to damages which in its judgment have resulted, or (2) to purchase in the open market at the expense of the contractor. At the discretion of the State, one or both of these courses of action may be followed.

6.7.1 Delivery Ticket

A delivery ticket shall be provided with each load of bituminous material and filler for joints stating the following:

- a. Storage facility identification;
- b. Ticket Number;
- c. Date/time;
- d. Item Number and Type;
- e. Quantity ticket printed by machine; and
- f. Quantity in 60° F gallons for emulsions and PG binder.

6.7.2 Quantity Received

It is the responsibility of the Authorized User to ascertain quantities shipped are accurate to the delivery ticket. Each vehicle should be checked for product upon arrival and prior to departure.

6.8 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/>.

6.9 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.

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

6.10 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.

6.11 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 30 days after the end of this contract.

Contractors shall specify if any authorized resellers, dealers or distributors are NYS Certified Minority- and/or Women-Owned Business Enterprises (MWBs), 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.

6.12 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 1.14.1 *Funding Source (Chip Seal)*; Section 2.13.1 *Funding Source (Cold Recycling)*; Section 3.12.1 *Funding Source (Crack Sealer/Mastic Filler)*; Section 4.12.1 *Funding Source (Heater Scarification)*; Section 5.14.1.) *Funding Source (Micro-surfacing)*; Section 6.14.1 *Funding Source (Paver Placed Surface Treatment)*).

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 (“MWBES 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 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 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>.
 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.

- E. 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

- 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.

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

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOBs”), thereby further integrating such businesses into New York State’s economy. OGS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OGS contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, 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/>

6.14 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*.

6.15 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.

6.16 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.

6.17 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.

6.18 Drug and Alcohol Use Prohibited

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

6.19 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.

6.20 Attachment 14 – Federal Aid Project Requirements (Chapter 12 – Appendix 12-1)

Attachment 14 – *Federal Aid Project Requirements (Chapter 12 – Appendix 12-1)* setting forth certain federally required contract provisions dated January 2019, is hereby expressly made a part of this invitation for Bids as fully as if set forth at length herein. Please retain this document for future reference.