



Contract Award Notification

Title	: Group 33700 – Extra Heavy Rock Material for Armoring & Erosion Control (Statewide)
	Classification Code(s): 11
Award Number	: <u>23203</u>
Contract Period	: March 27, 2020 – March 26, 2021
Bid Opening Date	: February 27, 2020
Date of Issue	: March 27, 2020
Specification Reference	: As Incorporated In The Invitation for Bids
Contractor Information	: Appears on Page 4 to 9 of this Award

Address Inquiries To:

State Agencies & Vendors	Political Subdivisions & Others
Name : Brandy Alden Title : Contract Management Specialist 2 Phone : 518-408-1140 E-mail : Brandy.Alden@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

The award is comprised of Contractors who can provide Extra Heavy Rock Material for Armoring & Erosion Control to all Authorized Users as needed to address the concern of flooding, widespread erosion, and water damage, which jeopardizes infrastructure, coastline structures, natural barriers, and navigation.

This award has a total of 0% participation goals for MWBE and SDVOB.

PR #23203

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SECTION 1: CONTRACTOR INFORMATION

NOTE: See individual contract items to determine actual awardees.

1.1 Contractor Information

Contract #	Contractor Name & Address	Contact Information	Fed. ID #/ NYS Vendor ID #
PC69126 SB	Barre Stone Products Inc 14120 West Lee Road Albion, NY 14411	Phone #: 585-589-4481 Contact: Mark D. Keeler Email: crusherun@aol.com	16-1274400 100007971
<i>Does <u>not</u> accept NYS Procurement Card</i>			
<u>Emergency or Weekends/Holidays</u>			
Phone # 585-734-1052 Contact Mark D. Keeler E-mail crusherun@aol.com			
Hours: 7:00AM to 4:30PM EST (M-F)			

Contract #	Contractor Name & Address	Contact Information	Fed. ID #/ NYS Vendor ID #
PC69127	Barrett Paving Materials Inc 26572 NYS Rte 37 Watertown, NY 13601	Phone #: 315-767-7169 Contact: Kevin Culbertson Email: Kculbertson@barrettpaving.com	13-3003901 1000038867
<i>Accepts NYS Procurement Card for orders up to \$50,000</i>			
<u>Emergency or Weekends/Holidays</u>			
Phone # 315-767-7169 Contact Kevin Culbertson E-mail Kculbertson@barrettpaving.com			
Hours: 8:00AM to 4:30PM EST (M-F)			

Contract #	Contractor Name & Address	Contact Information	Fed. ID #/ NYS Vendor ID #
PC69128	Callanan Industries Inc PO Box 15097 Albany, NY 12212	Toll-Free #: 800-446-8649 x72742 Phone #: 518-225-2539 Contact: James Elacqua Email: james.elacqua@callanan.com	14-1539261 1000027416
<i>Accepts NYS Procurement Card for orders up to \$50,000</i>			
<u>Emergency or Weekends/Holidays</u>			
Phone # 518-225-2539 Contact James Elacqua E-mail james.elacqua@callanan.com			
Hours: 7:00AM to 3:30PM EST (M-F)			

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Contract #	Contractor Name & Address	Contact Information	Fed. ID #/ NYS Vendor ID #
PC69129	Certified Road Constructors Inc d/b/a Material Sand & Gravel	Toll-Free #: 800-287-2854	14-1644821 1000014075
SB	172 Hinckley Road Poland, NY 13431	Phone #: 518-273-5800 x 131 or 518-858-7222 (cell) Contact: Nicholas M DiNova Jr Email: ndinova@bondedconcrete.com	
<i>Accepts NYS Procurement Card for orders up to \$50,000</i>			
<u>Emergency or Weekends/Holidays</u>			
Phone # 518-273-5800 x131 or 518-858-7222 (cell) Contact Nicholas M DiNova Jr E-mail ndinova@bondedconcrete.com			
Hours: 6:00AM to 4:00PM EST (M-F)			

Contract #	Contractor Name & Address	Contact Information	Fed. ID #/ NYS Vendor ID #
PC69130	Cobleskill Stone Products Inc 112 Rock Rd, PO Box 220 Cobleskill, NY 12043	Phone #: 518-234-0221 Contact: Shane J. Strong Email: Csp.shane@yahoo.com	14-1646795 10000069
<i>Does <u>not</u> accept NYS Procurement Card</i>			
<u>Emergency or Weekends/Holidays</u>			
Phone # 518-365-1736 Contact Mike M. Moore E-mail mmoore@cobleskillstone.com			
Hours: 7:00AM to 5:00PM EST (M-F) 7:00AM to Noon EST (Sa)			

Contract #	Contractor Name & Address	Contact Information	Fed. ID #/ NYS Vendor ID #
PC69131	County Line Stone Co Inc 4515 Crittenden Road	Phone #: 716-544-2079	16-0836378 1000007535
SB	Akron, NY 14001	Contact: Brad Buyers Email: Brad@clstone.us	
<i>Does <u>not</u> accept NYS Procurement Card</i>			
<u>Emergency or Weekends/Holidays</u>			
Phone # 716-544-2079 Contact Brad Buyers E-mail Brad@clstone.us			
Hours: 6:30AM to 4:30PM EST (M-F) 7:00AM to Noon EST (Sa) Seasonal Hours: 7:00AM to 3:30PM EST (Dec-April)			

(continued)

Contract #	Contractor Name & Address	Contact Information	Fed. ID #/ NYS Vendor ID #
PC69132	Dolomite Products Company Inc d/b/a A.L. Blades 1150 Penfield Road Rochester, NY 14625	Phone #: 585-750-1392 Contact: Chris McClurg Email: cmclurg@dolomitegroup.com	16-0410930 1000007433
<i>Does <u>not</u> accept NYS Procurement Card</i>			
<u>Emergency or Weekends/Holidays</u>			
Phone # 607-324-3636 Contact Robert Mitchell E-mail rmitchell@dolomitegroup.com			
Hours: 7:00AM to 3:45PM EST (M-F)			

Contract #	Contractor Name & Address	Contact Information	Fed. ID #/ NYS Vendor ID #
PC69133	Hanson Aggregates New York LLC 5126 South Onondaga Rd PO Box A Nedrow, NY 13120	Phone #: 315-469-3217 Contact: Roger R. Hutchinson Email: Roger.Hutchinson@LehighHanson.com	16-0928494 1000028456
<i>Accepts NYS Procurement Card for orders up to \$50,000</i>			
<u>Emergency or Weekends/Holidays</u>			
Phone # 315-762-2230 Contact Roger Hutchinson E-mail Roger.Hutchinson@LehighHanson.com			
Hours: 7:00AM to 4:00PM EST (M-F)			

Contract #	Contractor Name & Address	Contact Information	Fed. ID #/ NYS Vendor ID #
PC69134 SB	Mitchell Stone Products LLC 15 Mitchell Lane Tupper Lake, NY 12986	Phone #: 518-359-7029 Contact: Jennifer Boushie Email: Jen_at_mitchells@yahoo.com	26-2047268 1000031060
<i>Accepts NYS Procurement Card for orders up to \$50,000</i>			
<u>Emergency or Weekends/Holidays</u>			
Phone # 518-359-7029 Contact Paul Mitchell E-mail pjmlg@hotmail.com			
Hours: 9:00AM to 5:00PM EST (M-F)			

(continued)

Contract #	Contractor Name & Address	Contact Information	Fed. ID #/ NYS Vendor ID #
PC69135	Peckham Materials Corp 763 Schoharie Turnpike Athens, NY 12015	Phone #: 518-945-1120 x250 Contact: Jeri Camputaro Email: jcamp@peckham.com	14-1470013 1000006732
<p><i>Does <u>not</u> accept NYS Procurement Card</i> <i>Offers prompt payment discount of 1% / 10 days</i></p>		<p><u>Emergency or Weekends/Holidays</u> Phone # 518-588-6357 Contact Dan Flannery E-mail dflan@peckham.com</p>	
Hours: 8:00AM to 4:30PM EST (M-F)			

Contract #	Contractor Name & Address	Contact Information	Fed. ID #/ NYS Vendor ID #
PC69136	Schaefer Enterprises of Deposit Inc 315 Old Route 10 Deposit, NY 13754	Phone #: 607-760-0851 Contact: Eric Archer Email: ejalogger@gmail.com	16-1421766 1100022106
SB			
<p><i>Does <u>not</u> accept NYS Procurement Card</i></p>		<p><u>Emergency or Weekends/Holidays</u> Phone # 607-760-0851 Contact Eric Archer E-mail ejalogger@gmail.com</p>	
Hours: 7:00AM to 5:00PM EST (M-F)			

Contract #	Contractor Name & Address	Contact Information	Fed. ID #/ NYS Vendor ID #
PC69137	Seneca Stone Corporation 2747 Canoga Road Seneca Falls, NY 13148	Phone # 315-226-2533 Contact: Matt Bryant Email: mbryant@senecastone.com	16-1124518 1000007782
SB			
<p><i>Accepts NYS Procurement Card for orders up to \$5,000</i></p>		<p><u>Emergency or Weekends/Holidays</u> Phone # 315-226-2533 Contact Matt Bryant E-mail mbryant@senecastone.com</p>	
Hours: 7:00AM to 4:30PM EST (M-F)			

(continued)

Contract #	Contractor Name & Address	Contact Information	Fed. ID #/ NYS Vendor ID #
PC69138 SB	Shelby Crushed Stone Inc 10830 Blair Rd Medina, NY 14103	Phone #: 585-798-4501 Contact: Thomas Biamonte Email: tom@shelbystone.com	20-2421945 1000018998
<i>Accepts NYS Procurement Card for orders up to \$50,000</i>			
<u>Emergency or Weekends/Holidays</u>			
Phone # 585-798-4501 Contact Thomas Biamonte E-mail tom@shelbystone.com			
Hours: 7:00AM to 4:00PM EST (M-F) 7:00AM to Noon EST (Sa)			

Contract #	Contractor Name & Address	Contact Information	Fed. ID #/ NYS Vendor ID #
PC69139 SB	Thalle Industries Inc 172 Route 9 Fishkill, NY 12524	Phone #: 914-490-7328 Contact: John J. Amato Email: jamato@thalleindustries.com	13-3277028 1000054739
<i>Accepts NYS Procurement Card for orders up to \$50,000</i>			
<u>Emergency or Weekends/Holidays</u>			
Phone # 914-490-7328 Contact John J. Amato E-mail jamato@thalleindustries.com			
Hours: 6:00AM to 4:30PM EST (M-F) 6:00AM to 2:30PM EST (Sa)			

Contract #	Contractor Name & Address	Contact Information	Fed. ID #/ NYS Vendor ID #
PC69140 SB	Troy Sand & Gravel Co Inc 36 Grange Rd West Sand Lake, NY 12196	Toll-Free #: 800-287-2854 Phone #: 518-273-5800 x 131 or 518-858-7222 (cell) Contact: Nicholas M. DiNova Jr Email: ndinova@bondedconcrete.com	20-3172003 1000055560
<i>Accepts NYS Procurement Card for orders up to \$50,000</i>			
<u>Emergency or Weekends/Holidays</u>			
Phone # 518-273-5800 x 131 or 518-858-7222 (cell) Contact Nicholas M DiNova Jr E-mail ndinova@bondedconcrete.com			
Hours: 6:00AM to 4:00PM EST (M-F)			

(continued)

Contract #	Contractor Name & Address	Contact Information	Fed. ID #/ NYS Vendor ID #
PC69141	William E Dailey Inc 295 Airport Road Shaftsbury, VT 05262	Phone #: 518-791-7417 Contact: Dan Dearstyne Email: ddear@peckham.com	03-0191348 1000042655
<p><i>Does <u>not</u> accept NYS Procurement Card orders Offers prompt payment discount of 1% / 10 days</i></p> <p style="text-align: center;"><u>Emergency or Weekends/Holidays</u> Phone # 518-791-7417 Contact Dan Dearstyne E-mail ddear@peckham.com</p> <p style="text-align: center;">Hours: 7:00AM to 4:30PM EST (M-F)</p>			

Contract #	Contractor Name & Address	Contact Information	Fed. ID #/ NYS Vendor ID #
PC69142	Wingdale Materials Corp 172 Prospect Hill Road Brewster, NY 10509	Phone #: 914-760-2404 Contact: Rocco Circosta Email: rcirc@peckham.com	06-1627403 1100006615
<p><i>Does <u>not</u> accept NYS Procurement Card orders</i></p> <p style="text-align: center;"><u>Emergency or Weekends/Holidays</u> Phone # 914-760-2404 Contact Rocco Circosta E-mail rcirc@peckham.com</p> <p style="text-align: center;">Hours: 8:00AM to 5:00PM EST (M-F)</p>			

Cash Discount, If Shown, Should be Given Special Attention.
INVOICES MUST BE SENT DIRECTLY TO THE ORDERING AGENCY FOR PAYMENT.
(See "Contract Payments" and "Electronic Payments" in this document.)

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.

(continued)

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

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).

(continued)

1.5 Overview

This Award is issued by the New York State (“NYS”) Office of General Services (“OGS”), Procurement Services for Extra Heavy Rock Material for Armoring & Erosion Control as specified herein for all Authorized Users eligible to purchase.

Pursuant to Executive Order Number 198, a disaster was declared in the counties of Cayuga, Jefferson, Monroe, Niagara, Orleans, Oswego, St. Lawrence, and Wayne due to extensive flooding, widespread erosion, and water damage that cause significant damage to homes and other residential structures, businesses, and public infrastructure.

Historic high-water levels in Lake Ontario and the St. Lawrence River continue to be of concern as a cause of flooding, widespread erosion, and water damage, which continues to jeopardize infrastructure, coastline structures, natural barriers, and navigation.

The Resiliency and Economic Development Initiative Commission has identified high-priority projects that are urgently needed to protect homes, businesses, and critical infrastructure; to sustainably maintain safe navigation channels; and to address the immediate and long-term resiliency of communities along Lake Ontario and the St. Lawrence River.

1.6 Scope

Contract(s) resulting from this award are intended to provide a procurement mechanism for all Authorized Users to purchase Extra Heavy Rock Material for Armoring & Erosion Control as defined herein. The Contract Award Notification shall be comprised of Contractors who can provide Extra Heavy Rock Material for Armoring & Erosion Control to Authorized Users as needed and as provided for in this award.

1.7 Estimated Quantities

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. The anticipated dollar value of the award for this Solicitation, is approximately \$300 million annually. The individual value of each resultant Contract is indeterminate and will depend upon the number of Contracts issued. 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.

(continued)

SECTION 2: SPECIFICATIONS

2.1 References

References are made herein to New York State Department of Transportation, Standard Specifications, most current version and all current addenda at the time of the bid opening.

<https://www.dot.ny.gov/main/business-center/engineering/specifications/updated-standard-specifications-us>

2.2 Product Requirements

Specifications and descriptions for each Extra Heavy Rock Material for Armoring & Erosion Control material items included in this Contract are set forth under Attachment – *Specifications (Revised February 19, 2020)*.

Bidder shall comply with the specifications set forth therein. OGS reserves the right to modify specifications or add additional Products within scope during the course of a resultant Contract.

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SECTION 3: CONTINUOUS RECRUITMENT

3.1 Continuous Recruitment

There will be a Continuous Recruitment period for up to one (1) year following the initial award of Contracts resulting from this Solicitation. OGS may post a notice in the Contract Reporter to commence the Continuous Recruitment process. Under the Continuous Recruitment of Contractors concept (once the initial bidding process is completed and the initial round of Contracts are awarded) a Bidder will be provided with a Solicitation and allowed to complete and submit a full Bid proposal. This proposal will be evaluated under the same terms and conditions as the original Bids. If the Bidder's Submission is accepted, a Contract will be awarded. Once a Contractor has been awarded a Contract, they must remain there under the terms of their initial bid and will not be allowed to submit a new Bid under the Continuous Recruitment of Contractors provision.

For Contracts that are awarded under Continuous Recruitment, the Contract Term will commence upon execution of the Contract by OGS as evidenced by the date accompanying the OGS signature line. Contracts will co-terminate on the then current end date of the Contract, or at the end of any approved extension or renewal period.

3.2 Subsequent Periodic Recruitment

During the term of the Contract, the State reserves the right to conduct subsequent future Periodic Recruitments in order to add additional Contractors.

OGS will formally announce when a periodic recruitment Solicitation is issued. Periodic recruitments will be issued at the discretion of the OGS. A Bidder shall be required to submit such Submission documentation as required by OGS, which may include additional applicable statutory requirements currently in effect at the time of the periodic recruitment. For Contracts that are awarded under periodic recruitment, the Contract Term will commence upon execution of the Contract by OGS as evidenced by the date accompanying the OGS signature line. Contracts will co-terminate on the then current end date of the Contract, or at the end of any approved extension or renewal period.

Once awarded a Contract, a Contractor may not resubmit a Bid for future consideration for Product(s) covered by the scope of the awarded Contract. In addition, if a Bid is deemed non-responsive during the initial Solicitation or any recruitment period, a Bidder cannot reapply for a future Contract until the next recruitment period.

3.3 Procurement Instructions for Authorized Users

The resultant Contracts will be issued under a multiple award structure. Authorized Users shall procure Products that best meet their form, function, and utility requirements.

Before proceeding with their purchase, Authorized Users shall check the list of Preferred Source offerings and are reminded that they must comply with State Finance Law, particularly § 162, regarding commodities/services provided by preferred source suppliers.

Pursuant to State Finance Law § 163(10)(c), at the time of purchase, Authorized Users must base their selection among multiple Contracts upon which is the most practical and economical alternative that is in the best interests of the State.

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SECTION 4: TERMS AND CONDITIONS

4.1 Contract Term and Extensions

The Contract will be in effect for a term of up to one year. The Contract term shall commence after all necessary approvals and shall become effective upon mailing or electronic communication of the final executed documents to the Contractor (see Appendix B, *Contract Creation/Execution*).

All OGS Centralized Contracts resulting from this Solicitation shall have a co-terminus end date, including those Contracts awarded during any subsequent periodic recruitment. At the State's option, the Contract may be extended for four (4) 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*.

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

4.2 Short term Extension

This section shall apply in addition to any rights set forth in Appendix B, Contract Term – Extension. 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.

4.3 Quick Quote Process

The Quick Quote Process may be initiated by an Authorized User after approval and publication to the OGS website of the award resulting from this Invitation for Bids. Through the use of the Quick Quote Process, Authorized Users will be able to obtain material pricing, transportation/hauling pricing and material offloading pricing for any material included within Attachment 9 – Specifications (Revised February 19, 2020).

In addition to requesting pricing for materials, the Authorized User has the option to request pricing for transportation/hauling and also the option to request pricing for offloading of material. The Contractor must provide pricing for all the items included by an Authorized User when responding to a Quick Quote.

It is the Authorized User's responsibility to reach out to contractors (included on the published list within the NYS OGS award documents) regarding availability of the specific material the Authorized User is looking to purchase.

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4.3 Quick Quote Process (Cont'd)

The Authorized User will be required to solicit a minimum of three (3) Quick Quotes, for each project, (to contractors included on the published list within this NYS OGS award documents), in the interest of getting the best competitive price possible.

Each Quick Quote situation is unique, and the price is firm for that particular project only. If bid (Quick Quote) security is a concern, the Authorized User may require bids (Quick Quotes) to be sealed and/or opened publicly.

Authorized Users are required to award to the lowest responsive bid (Quick Quote) meeting the requirements outlined in the requested quote. There are no negotiations permitted following a Quick Quote application and prices cannot be changed once offered. If an award is made to other than the lowest bid (Quick Quote), the Authorized User must prepare detailed documentation explaining the action taken for the failure to meet requirements (e.g. the low Contractor could not provide the product in the time frame required, Contractor did not have necessary equipment, etc.) This explanation, along with the worksheets, must be made a part of the procurement record.

4.4 Best Pricing Offer

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

4.5 Price Structure

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

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

4.6 Ordering

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

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

(continued)

4.7 Purchasing Card Orders

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

4.8 Invoicing and Payment

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

Contract invoices must include detailed line item information matching the different options outlined in the Quick Quote Form to allow Authorized Users to verify that delivered pricing matches the correct price on the date of order. Authorized Users are instructed not to process invoices without the needed information matching the different options outlined in the Quick Quote Form.

Payment shall be made at the quoted and agreed upon price for the actual quantity of material received from the Contractor.

Failure to comply may result in lengthy payment delays.

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

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

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

4.9 Product Delivery

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

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4.10 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 (Revised February 19, 2020). 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.

4.11 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 is currently on PeopleSoft Financials version 9.2. SFS supports requisition-to-payment processing and financial management functions.

The State is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure Products in SFS. This application provides catalog capabilities. Contractors with Centralized Contracts have the ability to provide a “hosted” or “punch-out” catalog that integrates with SFS and is available to Authorized Users via a centralized eMarketplace website. Additional information may be found at:

<https://ogs.ny.gov/procurement/emarketplace>

There are no fees required for a Contractor's participation in the catalog site development or management. Upon completion and activation of an on-line catalog, State Agencies will process their orders through the SFS functionality and other Authorized Users can access the catalog site to fulfill orders directly.

The State 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/>

4.12 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>.

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4.13 Insurance

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

4.14 Report of Contract Usage

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

4.15 Contractor Requirements and Procedures for Business Participation Opportunities for NYS Certified Minority- and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women

I. New York State Law

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

II. General Provisions

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

B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for MWBEs. Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements.

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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 Form EEO - 101 - Workforce Utilization Reporting Form (Commodities and Services) (“Form EEO-101-Commodities and Services”)

1. The Contractor shall submit, and shall require each of its subcontractors to submit, a Form EEO-101-Commodities and Services to OGS to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Form EEO-101-Commodities and Services must be submitted electronically to OGS at EEO_CentCon@ogs.ny.gov on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January.
2. Separate forms shall be completed by Contractor and all subcontractors.

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3. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.
- D Contractor shall comply with the provisions of the Human Rights Law 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 and 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/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>.

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.

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- 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>

4.16 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/>

4.17 NYS Vendor Responsibility

OGS conducts a review of prospective Contractors ("Bidders") to provide reasonable assurances that the Bidder is responsive and responsible. A For-Profit Business Entity Questionnaire (hereinafter "Questionnaire") is used for non-construction Contracts and is designed to provide information to assess a Bidder's responsibility to conduct business in New York based upon financial and organizational capacity, legal authority, business integrity, and past performance history. By submitting a Bid, Bidder agrees to fully and accurately complete the Questionnaire. The Bidder acknowledges that the State's execution of the Contract will be contingent upon the State's determination that the Bidder is responsible, and that the State will be relying upon the Bidder's responses to the Questionnaire, in addition to all other information the State may obtain from other sources, when making its responsibility determination.

OGS recommends each Bidder file the required Questionnaire online via the New York State VendRep System. To enroll in and use the VendRep System, please refer to the VendRep System Instructions and User Support for Vendors available at the Office of the State Comptroller's (OSC) website at <http://www.osc.state.ny.us/vendors/index.htm> or to enroll, go directly to the VendRep System online at <https://portal.osc.state.ny.us>.

Vendors must provide their New York State Vendor Identification Number when enrolling. For information on how to request assignment of a Vendor ID, see the NYS Vendor File Registration section. OSC provides direct support for the VendRep System through user assistance, documents, online help, and a help desk.

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The OSC Help Desk contact information is located at <http://www.osc.state.ny.us/portal/contactbuss.htm>. Bidders opting to complete and submit the paper questionnaire can access this form and associated definitions via the OSC website at http://www.osc.state.ny.us/vendrep/forms_vendor.htm.

In order to assist the State in determining the responsibility of the Bidder prior to Contract award, the Bidder must complete and certify (or recertify) the Questionnaire no more than six (6) months prior to the Bid due date. A Bidder's Questionnaire cannot be viewed by OGS until the Bidder has certified the Questionnaire. It is recommended that all Bidders become familiar with all of the requirements of the Questionnaire in advance of the Bid opening to provide sufficient time to complete the Questionnaire.

The Bidder agrees that if it is awarded a Contract the following shall apply:

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

The Commissioner of OGS, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of OGS issues a written notice authorizing a resumption of performance under the Contract.

The Contractor agrees that if it is found by the State that Contractor's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Contract may be terminated by the Commissioner of OGS at the Contractor's expense where the Contractor is determined by the Commissioner of OGS to be non-responsible. In such event, the Commissioner of OGS may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

4.18 "OGS or Less" Guidelines

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

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

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4.19 Non-State Agencies Participation in Centralized Contracts

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

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

4.20 Extension of Use

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

4.21 New Accounts

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

4.22 Drug and Alcohol Use Prohibited

For reasons of safety and public policy, in any Contract resulting from this Solicitation, the use of alcoholic beverages or illegal drugs by the Contractor's personnel shall not be permitted in performance of the Contract.

4.23 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.

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