

GROUP 35200 – FIREARMS, AMMUNITION & LESS-LETHAL PRODUCTS

AWARD 23155

HOW TO USE THE CONTRACTS

OGS Contract Manager

Neilene Rabideau

Contract Management Specialist

Office of General Services

Procurement Services, Corning Tower, 38th Floor

Empire State Plaza, Albany, NY 12242

Phone: 518-473-6518

E-mail: neilene.rabideau@ogs.ny.gov

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INTRODUCTION

This document is subject to revisions as policies and regulations change.

The following definition of Authorized User is specific for this Award:

“Authorized User” refers to entities that meet the definition in Appendix B, Definitions and are comprised of “Police Officer(s)” as defined by subdivision 34 of §1.20 of the New York State Criminal Procedure Law and/or “Peace Officer(s)” as defined in §2.10 of the New York State Criminal Procedure Law.

OGS determined an overall goal of 0% for MWBE participation and 0% SDVOB participation in the resulting Contracts.

OGS determined there are no opportunities for Service-Disabled Veteran-Owned Businesses (SDVOBs) participation.

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 Sites adjacent to New York State), the terms of the *Price* clause will be modified to include delivery to Sites 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 (<http://www.ogs.state.ny.us/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.

EXTENSION OF USE

Any Contract 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.

OVERLAPPING CONTRACT PRODUCTS

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

OGS identified Products that may be available from other OGS Centralized Contracts to assist Authorized Users in their procurement efforts. The table below is a tool, but it is not intended to capture every instance at Award or when Contract offerings are updated. At the time of purchase, it is incumbent upon the Authorized User to review other contracts to identify overlapping Contract Products and comply with all applicable requirements and guidelines.

Categories Represented in Contracts under this Group 35200		NYS Contract Overlap 	Group 38232 - Hazardous Incident Response Equip. (HIRE)
Lot 1	Firearms Accessories Only - which includes magazines and cleaning kits		
Lot 5	Holsters, Duty Belts & Related Accessories		X
Lot 9	Firearms Optics		X

PROCUREMENT INSTRUCTIONS FOR AUTHORIZED USERS

The resultant Contract includes the following procurement instructions for Authorized Users. OGS reserves the right to change the instructions set forth in this section in non-material and non-substantive ways without seeking a contract amendment.

Authorized Users should follow the following procurement instructions when purchasing from the resulting Contract.

- A. Before proceeding with their purchase, Authorized Users will 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.
- B. When utilizing the Contract, the Authorized User should be familiar with and follow the terms and conditions governing its use. Use of Products from the resultant Contract must be done in accordance with all applicable laws, regulations, policies and procedures. The Authorized User is accountable and responsible for compliance with the requirements of public procurement processes. 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 which should include:
 - A statement of need and associated requirements;
 - Obtaining all necessary prior approvals;
 - A summary of the Contract alternatives considered for the purchase; and
 - The reason(s) supporting the resulting purchase (e.g., show that basis for the selection among multiple Contractors at the time of purchase was the most practical and economical alternative and was in the best interests of the State).
- C. The resultant Contract will be issued under a multiple award structure, and includes the Lots listed below. Pursuant to State Finance Law § 163(10)(c), at the time of purchase, Authorized Users should base their selection among multiple Contractors upon which is the most practical and economical alternative that is in the best interests of the State.

Awarded Contractors' Product offerings, Contract, and pricing information will be posted to the OGS website. The Authorized User will determine the appropriate Lot to make its purchase from and procure Products that best meet their form, function, and utility requirements.

- Lot 1 – Firearms & Accessories
- Lot 2 – Live Ammunition
- Lot 3 – Less-Lethal Ammunition
- Lot 4 – Restraints
- Lot 5 – Batons & Baton Holders
- Lot 6 – Holsters, Duty Belts & Related Holders
- Lot 7 – Conducted Electrical Weapons (CEWs) & Accessories.
- Lot 8 – Less-Lethal Gases & Grenades.
- Lot 9 – Firearm Optics & Accessories.

LOCATION OF CONTRACTOR'S INFORMATION

The Contractor's information will be published to the OGS website for Award 23155, Group 35200 – Firearms, Ammunition, and Less-Lethal Products: <https://ogs.ny.gov/purchase/search/searchresults.asp>

The Contractor's information will include the Contractor's name and contact information, the OGS Contract number and SB, MWBE, SDVOB designation, and links to pricing and authorized Dealer/Distributor information (if applicable).

PRICE

The Contractor's pricing will be published to the OGS website:

- A. Pricing

It's the Contractor's option to increase the Percentage Discount offered to Authorized Users based on individual orders. Discounts may be greater, but in no instance, may they be lower than the awarded Percentage Discount.

Once awarded a Contract, Contractors must not decrease their awarded Percentage Discount for the entire term of the Contract; even if the comparable GSA contract, the other governmental contract, or cooperative contract discounts are decreased.

The awarded Percentage Discount may be increased by the Contractor at any time during the Contract term.

B. Pricing Incentives and Rebates

More favorable pricing can be offered to Authorized Users and it is expected that Authorized Users will obtain the same rebates and special offers such as regional and national promotional pricing as provided to other customers. If the promotional pricing offer provides a lower price than that of the NYS Net Pricing, then the Authorized User will receive the lower of the two prices;

C. Delivery.

Standard delivery must be provided at no additional expense (see also Appendix B, Product Delivery). Price must include all Customs Duties and charges, and be net, freight on board F.O.B. destination any point in New York State, for orders as designated by the Authorized User, including inside delivery. In addition, delivery sites may be expanded (see Appendix B, Extension of Use); and

D. Taxes

Authorized Users are exempt from FET/FAET and State and local sales taxes.

MINIMUM ORDER

The only minimum order associated with this Contract is for Lot 2 – Live Ammunition. For Lot 2, the minimum order is one (1) full case.

There is no minimum order for the other Lots.

PRODUCT DELIVERY

Delivery is expressed on the “Financial Offer” tab of the Contractor’s pricing worksheet. The delivery is expressed in the number of calendar days required to make delivery after receipt of a Purchase Order to any ordering Authorized User.

The Contractor will be required to deliver Product anywhere within NYS boundaries, at the location and time designated by the Authorized User on the Purchase Order, or by other mutual agreement. Delivery will be made in accordance with instructions on the Purchase Order from each agency. 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 ordering agency and, if applicable, from the Office of General Services, Procurement Services.

A. Shipping Dates and Delivery Time

1. All correspondence on shipping dates and delivery time will be directed to the Authorized User's contact person.
2. Contractor will provide written acknowledgement of orders within five (5) business days after receipt of order and will also provide anticipated shipping date.
3. If shipment will not be made within the anticipated shipping/delivery timeframe, the Contractor is required to notify the Authorized User in writing at least two weeks prior to the latest date of the original delivery obligation. This notification must include the reason for the delay and a revised anticipated shipping and delivery dates. The Authorized User may request the Contractor to provide documentation to support the reason for the shipping/delivery delay. Failure to supply timely, written notification of the delay to the Authorized User, may initiate Contract default proceedings.

FIREARMS AND AMMUNITION EXERCISE TAX (FET/FAET)

The NYS sales tax exemption registration #14740026K does not apply to the federal Firearms and Ammunition Exercise Tax (FET/FAET).

Sales to State or local governments are exempt under the FET/FAET if the Manufacturer, importer or producer sells the article directly to the State or local governments for their exclusive use (26 U.S.C. CHAPTER 32; 27 CFR 53.135 https://www.ttb.gov/firearms/reference_guide.shtml).

Sales to State or local governments are not exempt if the articles are resold, this includes the resale to employees (such as pistols or revolvers that are resold by a police department to its police officers).

The evidence required in support of a FET/FAET tax-free sale to State or local governments under Internal Revenue Code Chapter 32, §4221 (a)(4); 27 CFR 53.135 must consist of ONE (1) of the following:

EITHER

- Register with the U.S. Department of the Treasury, Alcohol & Tobacco Tax and Trade Bureau (TTB) to obtain a Certificate of Registry for the FET/FAET tax exemption; OR
- Sign an Exemption Certificate (TTB F 5600.35) for every order; OR
- Sign an Exemption Certificate (TTB F 5600.35) for a specific date range (not to exceed 12 calendar quarters) to cover all orders within that specific date range

The Exemption Certificate referenced in B and C is located on the TTB website:

<https://www.ttb.gov/forms/5000.shtml>. The signed Exemption Certificate must be signed in original (“wet”) ink.

NEW ACCOUNTS

Contractor may ask State Agencies and Non-State 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 will not be required to provide credit references.

“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.).

State Agencies are reminded that they must provide the Contractor an opportunity to match the non-Contract savings at least two (2) 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.

ORDERING

Purchase Orders will be made in accordance with the terms set forth in Appendix B, Purchase Orders. Orders submitted will be deemed received by Contractor on the date submitted by the Authorized User.

All orders must reference the Contract number and Purchase Order number (if applicable).

Upon Contractor’s receipt of an order, confirmation is to be provided to the Authorized User via email or facsimile. Orders submitted will be deemed received by Contractor on the date submitted. Order confirmation should be sufficiently detailed, and include, at a minimum, purchase price, date of order, delivery information (if applicable), Authorized User name, and Contractor’s sales representative (if applicable).

REQUIRED INFORMATION FOR PURCHASE ORDERS (POs)

All Authorized Users will utilize the following procedures to issue POs, accept Products, pay Invoices, and process credit for trade-ins:

Online State Agencies must enter the inspection period listed in the below PRODUCT INSPECTION AND ACCEPTANCE PERIOD when issuing the PO. SFS will not dispatch the PO until the Product INSPECTION AND ACCEPTANCE PERIOD is entered.

For phased deliveries, Online State Agencies must enter a line for each separate delivery on the PO. Each separate line for delivery will be inspected and accepted.

- A. For anticipated credits for trade-ins, the Authorized User will follow the PO instructions listed in the below CREDITS FOR TRADE-INS ITEMS.

Non-State Authorized Users and Bulkload State Agencies will issue POs in accordance with their policies and procedures. For inspection period, Authorized Users will include the information listed in the below PRODUCT INSPECTION AND ACCEPTANCE PERIOD. For trade-ins, Authorized Users will include the information listed in the below TRADE-INS section of this document.

PRODUCT INSPECTION AND ACCEPTANCE PERIOD

Products must not pass from the Contractor to the Authorized User until the Products have been received, inspected, tested, and officer qualified (where applicable) for a period of 60 days from the date of delivery; which constitutes acceptance by the Authorized User. Mere acknowledgment by Authorized User personnel of the delivery or receipt of goods (e.g., signed bill of lading) will not be deemed or construed as acceptance of the Products received. Authorized Users reserve the right to require a longer acceptance period at time of purchase.

If Non-State Authorized Users and Bulkload State Agencies fail to provide notice of rejection to the Contractor by the expiration of the 60-day acceptance period, this will constitute acceptance by the Authorized User.

After the successful completion of the 60-day acceptance period, Online State Agencies must select “accept” in SFS for the Product(s) within one (1) business day of completing the aforementioned 60-day acceptance period.

After an Authorized User has provided notice of acceptance to the Contractor for the Products purchased, the Contractor may invoice the Authorized User for payment.

INVOICING AND PAYMENT

Invoicing and payment will be made in accordance with the terms set forth in Appendix B, Section 45 Contract Invoicing.

After receiving the Authorized User’s acceptance of Products itemized on the Purchase Order, the Contractor will invoice Authorized User for any Products accepted. 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. The Contractor must provide itemized invoicing for all Products ordered. 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 (PCXXXX)
- 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

Cost centers or branch offices within an Authorized User may require separate invoicing as specified by each Authorized User. The Contractor's billing system must 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>.

TRADE-IN ITEMS

It is acceptable for the Contractor to provide pricing for estimated trade-in items in their quote for new purchases. However, estimates of trade-in items should not be subtracted from the Gross Purchase Price for new items on quotes or Authorized User's Purchase Orders.

After an Authorized User has provided notice of acceptance to the Contractor for the Products purchased, the Contractor will invoice the Authorized User for payment.

The Authorized User will submit trade-in items along with the Trade-In Itemization Form to the Contractor within 30 days of invoice. Contractor must verify the accuracy of all information including, but not limited to, Serial #s of each item prior to issuing a credit (See Section 6 Credit of Trade-ins).

All items submitted to the Contractor for trade-in Shall be "as-is" and OGS and Authorized User make no representations as to the condition of the items. OGS and Authorized User further expressly disclaim all warranties including any warranties for fitness for particular purpose or merchantability of the weapons. It is the responsibility of the Contractor to investigate the condition of the items. The Contractor releases OGS and the Authorized User from all liability related to the use of the items, and will ensure that any third parties that receive any items are made aware of this disclaimer, including but not limited to the "as-is" nature of the items and agree to release OGS and the Authorized User from all liability related to the use of the items.

CREDIT FOR TRADE-IN ITEMS

Authorized User Instructions

The following are the procedure for Online State Agencies using SFS, Bulkload State Agencies, and Non-State Authorized Users to conduct anticipated credits for trade-ins:

Online State Agencies will create a \$0.00 (zero dollar) line on the Purchase Order (PO) for the new purchase in SFS. The \$0.00 line will include the following:

- A. Manufacturer Name
- B. Model #s of trade-in Products
- C. Description of trade-in Product
- D. Price

Bulkload State Agencies and Non-State Authorized Users will list the following information on their PO for all anticipated trade-in items:

- A. Manufacturer Name
- B. Model #s of trade-in Products
- C. Description of trade-in Products
- D. Price

Contractor Instructions

Contractor must verify the accuracy of all information submitted by the Authorized User in the applicable Trade-in Itemization Form. Once the Contractor has verified the accuracy of the information contained in an applicable Trade-in Itemization Form, the Contractor will submit credit memos or checks referencing the Purchase Order (PO) for the new Product purchased

The following are the procedures for Contractors to conduct credits for trade-ins.

State Agencies: The Contractor will access the SFS and use the appropriate SFS codes to link the credit to the initial PO. Please refer to Sec. XII.9.D of the New York State Guide to Financial Operations ("GFO"): <https://www.osc.state.ny.us/agencies/guide/MyWebHelp/#XII/9/D.htm%3FTocPath%3DXII.%20Expenditures%7C9.%20Post-Payment%20Activities%7C> 4

Non-State Authorized Users: The Contractor will transmit to the Authorized User a credit or check along with supporting information required by the Authorized User.

PRODUCT RETURNS AND EXCHANGES DUE TO CONTRACTOR'S ERROR

In addition to the provisions of Appendix B, *Title and Risk of Loss, Product Substitution, and Rejected Product*, Products returned or exchanged due to quality problems, duplicated shipments, outdated Product, incorrect Product shipped, or Contractor errors otherwise not specified, will be handled as follows:

1. Upon receipt of Product, Authorized Users must inspect all Products
2. During the Product Inspection period if Product is not acceptable, the Authorized User is responsible to contact the Contractor and inform them of the intent to return the Product. Product will be returned to the Contractor with no restocking fee or other charges to the Authorized User.
3. The Contractor is responsible for removal of Products from the Authorized User's premises within ten (10) calendar days of notification of rejection by the Authorized User. The Authorized User should obtain a return authorization from the Contractor.
4. In the event a specified Contract Product becomes unavailable, the Authorized User may require the Contractor to substitute a new Product which will perform at the same or better level at no additional cost or expense to the Authorized User. Authorized User will determine what constitutes the same or better level of performance. Upon receipt of the substituted new Product, Authorized User must commence a new Product Inspection period

DISCREPANCIES

The Contractor will resolve all order and invoice discrepancies (e.g., shortages, incorrect Product received, etc.) within five (5) business days from notification.

PRODUCT RETURNS DUE TO AUTHORIZED USER ERROR

Standard stock Products ordered in error by Authorized User will be returned at Authorized User's expense within 30 days of receipt. Product should be in resalable condition (original container, unused).

Contractor can only charge a restocking fee for Product returned or exchanged due to Authorized User error that is determined not to be suitable for resale. The restocking fee cannot exceed the NYS Net Pricing of the returned or exchanged Product.

INSTRUCTION MANUALS

At the time of delivery, Contractor will provide a complete Manufacturer's instruction manual for the Product supplied to the Authorized User.

MANUFACTURER'S INSTRUCTIONS FOR ARMORERS

Awarded Contractor(s) will provide Authorized Users with additional Manufacturer's instructions upon request. These instructions may include, but are not limited to:

- Manufacturer's instructions for routine maintenance of each firearm model within a Product Line; and
- Manufacturer's instructions for armorer maintenance with exploded view and parts list for each firearm model within a Product Line.

PRODUCT END-OF-CYCLE RECYCLING/DISPOSAL

If available, Contractor is to provide an overview of the Manufacturer(s) established recycling and/or disposal program.

At the request of the ordering entity, the Contractor is to provide written instructions on how to use this program. If Manufacturer offers a recycling and/or disposal program, then the Contractor will provide documentation to program participants that the units were disposed of in an environmentally sound manner in compliance with applicable local, state and federal laws. Contractor will provide said records to OGS and/or any other governmental entity with oversight responsibility, upon request.