



# Office of General Services Procurement Services

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## Contract Award Notification

<b>Title</b>	: <b>Group 38604 Yellow Traffic Paint (Waterborne—Lead-Free) (Statewide)</b>
	<b>Classification Code(s): 31 &amp; 73</b>
<b>Award Number</b>	: <b>23172</b>
<b>Contract Period</b>	: <b>August 28, 2019 through May 17, 2022</b>
<b>Bid Opening Date</b>	: <b>August 13, 2019</b>
<b>Date of Issue</b>	: <b>August 28, 2019 (Revised January 1 2021)</b>
<b>Specification Reference</b>	: <b>As Incorporated In The Solicitation</b>
<b>Contractor Information</b>	: <b>Appears on Page 4 &amp; 5 of this Award</b>

### Address Inquiries To:

State Agencies & Vendors	Political Subdivisions & Others
Name : Brandy Alden Title : Contract Management Specialist 2 Phone : 518-408-1140 E-mail : <a href="mailto:Brandy.Alden@ogs.ny.gov">Brandy.Alden@ogs.ny.gov</a>	<b>Procurement Services Customer Services</b>  Phone : 518-474-6717 E-mail : <a href="mailto:customer.services@ogs.ny.gov">customer.services@ogs.ny.gov</a>

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

### Description

This award is for ready-mixed, fast drying, organic yellow waterborne traffic paint for bituminous and Portland cement concrete pavements. Yellow waterborne traffic paint supplied under this award shall be designed for heated application and shall be compatible with standard mobile long line application equipment. Yellow traffic paint products specified herein are for all Authorized Users eligible to purchase through this award.

PR # 23172

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**SECTION 1: CONTRACTOR INFORMATION**

**1.1 Contractor Information**

**NOTE:** See individual contract items to determine actual awardees.  
**Additional contact information provided on the following pages.**

Contract #	Contractor Name & Address	Contract Admin Information	Fed. ID #/ NYS Vendor ID #
PC68885	Ennis-Flint, Inc 4161 Piedmont Pkwy Ste 370 Greensboro, NC 27410	Toll Free #: (800) 331-8118 Phone #: (336) 308-3847 Contact: Cindy Burk Email: contracts@ennisflint.com Website: www.ennisflint.com	75-2657523 1000009671
<i>Contractor accepts NYS Procurement Card for purchases up to \$50,000</i>			
<b>Hours: 8:00AM to 5:00PM EST (M-F)</b>			

Contract #	Contractor Name & Address	Contract Admin Information	Fed. ID #/ NYS Vendor ID #
PC68886	Ozark Materials, LLC 591 Glendale Ave Greenville, AL 36037	Toll Free #: N/A Phone #: (334) 371-2303 Contact: Dyana Scrushy Email: dyana@ozarkmaterials.net Website: www.ozarkmaterials.net	45-4117820 1100182975
<i>Contractor accepts NYS Procurement Card for purchases up to \$50,000</i>			
<b>Hours: 8:00AM to 5:00PM CST (M-F)</b>			

Contract #	Contractor Name & Address	Contract Admin Information	Fed. ID #/ NYS Vendor ID #
PC68887	The Sherwin-Williams Company 101 W Prospect Ave 720 Guildhall Cleveland, OH 44115	Toll Free #: N/A Phone #: (443) 370-8370 Contact: Pam Phillips Email: pam.s.phillips@sherwin.com	34-0526850 1000031328
<i>Contractor does not accept NYS Procurement Card</i>			
<b>Hours: 8:00AM to 4:30PM EST (M-F)</b>			

Cash Discount, If Shown, Should be Given Special Attention.  
**INVOICES MUST BE SENT DIRECTLY TO THE ORDERING AGENCY FOR PAYMENT.**  
(See "Invoicing and 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)

**Additional Contact Information:**

<b>PC68885 - Ennis-Flint, Inc</b>			
<b>NYS Contract Orders</b>	<b>Billing Issues</b>	<b>Container Returns</b>	<b>Emergency</b>
Kelli AH-Keen Contract Specialist (336) 308-3794 (800) 331-8118 contracts@ennisflint.com	Caren Beck Accounts Receivable (336) 308-3790 (800) 331-8118 ar@ennisflint.com	Jay Wright Logistics Coordinator (804) 309-3206 (800) 331-8118 jwright@ennisflint.com	Don Vermeer Government Sales Director (972) 689-4803 N/A don@ennisflint.com

<b>PC68886 - Ozark Materials LLC</b>	
<b>NYS Contract Orders Emergency / Container Returns</b>	<b>Billing Issues</b>
Dyana Scrushy Bid Coordinator (334) 371-2303 dyana@ozarkmaterials.net	Vanessa Taylor Invoicing Clerk (334) 371-2300 vanessa@ozarkmaterials.net

<b>PC68887 - The Sherwin-Williams Company</b>	
<b>NYS Contract Orders Billing Issues / Container Returns</b>	<b>Emergency</b>
Pam Phillips Sales Coordinator (443) 370-8370 pam.s.phillips@sherwin.com	John Palomba Director, Pavement Markings (216) 408-6364 john.palomba@sherwin.com

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**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).

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## 1.5 Overview & Scope

This award is issued by the New York State (“NYS”) Office of General Services (“OGS”), Procurement Services for ready-mixed, fast drying, organic yellow waterborne traffic paint for bituminous and Portland cement concrete pavements.

Yellow waterborne traffic paint supplied under this award shall be designed for heated application and shall be compatible with standard mobile long line application equipment. Yellow traffic paint products specified herein are for all Authorized Users eligible to purchase through this award.

Traffic markings (stripes) are regarded as one of the most cost-effective methods of controlling traffic flow and these products increase driver awareness and help ensure the safety of the driving public.

## 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 \$3.5 million 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 yellow traffic paint product(s) 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 yellow traffic paint product(s) 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.

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## 1.7 Definitions

Capitalized terms used in this Solicitation shall be defined in accordance with Appendix B, Definitions, or as below.

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

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

**“NYS Holidays”** refers to the legal holidays for State employees in the classified service of the executive branch, as more particularly specified on the website of the NYS Department of Civil Service. This includes the following: New Year’s Day; Martin Luther King Day; Washington’s Birthday (observed); Memorial Day; Independence Day; Labor Day; Columbus Day; Veteran’s Day; Thanksgiving Day; and Christmas Day.

**“NYS Vendor ID”** shall mean the ten-character identifier issued by New York State when a vendor is registered on the Vendor File.

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

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

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

**“SDVOB”** shall refer to a NYS-certified Service-Disabled Veteran-Owned Business

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## SECTION 2: SPECIFICATIONS

### 2.1 General

The intent of this specification is to describe ready-mixed fast-setting, non-tracking pavement marking paint that is heated when used for pavement striping.

The paint shall be compatible with standard mobile long line application equipment.

The paint shall be applied on standard types of pavement surfaces at a minimum wet film thickness of 15 mils for existing pavement and a minimum wet film thickness of 20 mils for new asphalt pavement. Wet film thickness is defined as the paint thickness (without reflective glass spheres) measured immediately after application. Specialty types of pavements with coarse aggregate or an open-graded pavement surface texture may require a wet film thickness in the 20 mil to 30 mil range. Examples of specialty type asphalt mixes are referred to as "open-graded" and "paver-placed surface treatment". Thicker applications of paint may increase the field drying time.

Organic yellow paint shall be manufactured without lead chromate type pigment or other types of pigments or filler materials containing toxic contaminants listed in Table 1 under Section 261.24 Toxicity Characteristic, Code of Federal Regulation Title 40 - Protection of Environment.

#### Standards

All standards herein are minimum standards.

#### Percentages

All percentages used are calculated by weight.

#### Service

As proper application is deemed essential to the success of this process, the Contractor shall provide at least one technician with experience to instruct in the application of these types of materials at no additional charge. The technician will be familiar with the application equipment and the materials and have successful experience in the placing of the reflective markings.

#### Quality Assurance Provisions

The Contractor shall be responsible for complying with all physical and chemical test requirements as stipulated in the specifications.

#### Field Quality of Paint

Contractor must respond to all quality control issues raised by an Authorized User within 48 hours of notification.

The Contractor shall make corrective adjustments to the paint formulation if the supplied paint:

- contains thick skins, lumps, or coarse particles in the shipping containers;
- exhibits severe settling or separation in the shipping containers;
- cannot be easily pumped from the shipping containers into the paint tanks on the striping equipment;
- is clogging any component of the striping truck pumping, heating, or spraying system on a regular basis;
- cannot be sprayed properly through mobile, long line striping equipment; or
- is not reaching a suitable no-track condition after field application.
- is demonstrating a performance failure of any kind.

All material supplied within the Contract is subject to random sampling and testing for specification compliance at any time.

#### Shelf Life

Shelf life is the period during which the yellow traffic paint product(s) shall be satisfactory in every respect for use and is figured from the date of delivery.

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## 2.2 Paint Composition Requirements

The composition of fast drying waterborne yellow traffic paint shall be at the option of the manufacturer, providing the following requirements of this specification are met:

Paint shall be manufactured to adhere to existing paint, and to all types of pavement surfaces, and the paint shall provide good daytime appearance, hiding power, nighttime color and visibility, and retro-reflectivity. It shall be manufactured to resist appreciable fading and discoloration under ultraviolet sun exposure. When viewed at night under normal driving conditions, the color of organic yellow paint shall appear similar to its daytime color.

## 2.3 Pigment:

The pigment portion shall include a combination of prime and extended pigments as required to produce organic yellow traffic paint meeting the color and other requirements of the finished product as specified in this specification. The paint manufacturer shall report the types of pigment used and the total percent pigment by weight of the finished product.

NOTE: ASTM D3723 requires placing the paint sample in a muffle furnace heated at  $842 \pm 45^\circ\text{F}$ . Organic yellow pigment may decompose at these temperatures, thereby resulting in an erroneous laboratory test result for pigment content. The manufacturer's "certified" organic yellow pigment content shall be used to determine the final laboratory test results for total pigment (%) and for nonvolatile vehicle (%). The Materials Bureau reserves the right to validate the manufacturer's "certified" organic yellow pigment content through outside independent laboratory testing.

When tested in accordance with ASTM D 3335 Standard Test Method of Low Concentrations of Lead, Cadmium, and Cobalt in Paint by Atomic Absorption Spectroscopy, the lead content of organic yellow paint shall be less than 600 ppm.

## 2.4 Vehicle (ASTM D3723):

The non-volatile portion of the vehicle shall be composed of a fast-drying emulsion. The "Lot" of finished paint shall be manufactured using only one type (brand name) fast dry emulsion. The nonvolatile vehicle solids percent by weight of vehicle shall not be less than 43.0%.

## 2.5 Finished Paint Requirements (ASTM D3723):

The finished paint shall meet the following requirements:

- a. Volatile Organic Compounds (VOC):  
The volatile organic compounds (VOC) content, expressed as pounds of volatile organic compounds per gallon per Section 4.28 – *Environmental Attributes and NYS Executive Order Number 4*.
- b. Total Solids Content (ASTM D3723):  
The finished paint shall be not less than 76.0% total non-volatile by weight and shall be not less than 62.0% by volume.
- c. Weight per Gallon (ASTM D1475):  
The weight per gallon of the finished paint shall not be less than 13.0 pounds for organic yellow when tested using the weight per gallon cup.
- d. Color:  
Organic Yellow paint shall be an approximate visual color match to Munsell Book Notation 10YR 8/14 when viewed under North Standard Daylight (ASTM D1535), and it shall be within the chromaticity coordinate limits as found in the Chart B at the bottom of page 39. Chromaticity coordinate testing shall be performed in accordance with ASTM E1347 using a color spectrophotometer with  $45^\circ$  circumferential illumination/ $0^\circ$  viewing geometry, illuminant C, and  $2^\circ$  standard observer angle. The color instrument shall measure the visible spectrum from 3800 to 7200 Å with a wavelength interval and spectral band pass of 100 Å. The sample port aperture shall be 1.28 in.

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The test specimens shall be prepared by applying the paint at a  $15 \pm 1$  mil nominal wet film thickness drawdown (without glass spheres) to a Leneta Form 5C or equivalent. The paint specimens shall be allowed to dry for a minimum 24 hours prior to testing.

e. Directional Reflectance (ASTM E1347):

The directional reflectance (represented by CIE tristimulus value Y) of organic yellow paint shall be a minimum 84% and 54%, respectively.

Directional reflectance testing shall be performed using a color spectrophotometer with a  $45^\circ$  circumferential illumination/ $0^\circ$  viewing geometry, illuminant C, and  $2^\circ$  standard observer angle. The color instrument shall measure the visible spectrum from 3800 to 7200 Å with wavelength interval and spectral bandpass of 100 Å. The sample port aperture shall be 1.28 in.

The test specimens shall be prepared by applying the paint (without glass spheres) to black and white contrast panels (Leneta Form 5C or equivalent) using two perpendicular nominal 5 mil wet film thickness drawdowns (total nominal wet film thickness of 10 mils).

The paint specimens shall be allowed to dry for a minimum 24 hours prior to testing.

f. Viscosity (ASTM D562 Procedure B):

Waterborne paint shall have a consistency of 75 to 95 Krebs Units at  $77^\circ\text{F}$  when tested on The Stormer Viscometer at a shearing rate of 100 revolutions per 30 sec. The test shall be run within five minutes after the paint has been thoroughly mixed by hand stirring.

g. Field No-Track Time:

Fast drying waterborne paint, applied at a wet film thickness of  $15 \pm 1$  mil., and reflectorized with glass spheres at the rate of 6 pounds/gallon, shall reach a “no-track condition” in 3 minutes or less. This no-track time shall be met when the paint temperature at the spray gun is  $140^\circ\text{F}$  minimum, the pavement and ambient temperatures are above  $55^\circ\text{F}$ , and the relative humidity is 80% or less. A “no-track condition” occurs when a passenger car tire crosses over the painted line (without turning of the tire) at a speed of approximately 40 mph, and the paint is not deposited onto the pavement, when viewed from a distance of 50 feet.

h. Bleeding:

The quality of the pigmented binder shall be such that it will cause no bleeding of the asphalt surface over which it is applied, which may impair the paints color or visibility.

i. Dry Opacity (ASTM D2805):

The paint shall have a minimum contrast ratio of 0.95 when tested in accordance to the following procedure:

A 3-1/2 inch wide wet film shall be applied to black and white contrast panels with a Bird applicator or other suitable wet film applicator designed to produce a nominal wet film thickness of 5 mils. The black/white colors of the contrast panels shall match those of Leneta Form 5C or equivalent. The wet paint shall be drawn from the white to the black portion of the panel and allowed to dry for a minimum of one hour. Forty-five degrees reflectance measurements shall be taken on the white and the black portions of the panel. The contrast ratio shall be calculated by dividing the reflectance of the black portion by the reflectance of the white portion

j. Abrasion Resistance (ASTM D4060):

Four plate samples for each lot shall be prepared for testing on the Taber Abraser. The paint shall be sprayed on steel plates, or applied by other suitable means so as to insure a nominal 15 mil wet film thickness on each plate. Plates are cured at standard laboratory temperature and humidity for 2 to 24 hours. The paint abrasion plates shall be cleaned, dressed, and baked at  $105^\circ\text{C}$  ( $221^\circ\text{F}$ ) for 18 hours. After this time the plates are allowed to cool in a dessicator for one hour and weighed. The plates shall be abraded for 1,000 cycles on the Taber Abraser. The Taber Abraser shall be operated with 500 gram (1.10 lb) weights and CS 10 wheels on the machine.

After abrading, the samples shall be cleaned with a soft brush, placed in a dessicator for one hour and weighed again. The average weight loss for the four plates shall not exceed 50 milligrams (0.00176 oz).

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- k. Flexibility (Federal Specification TT-P-1952B, Section 4.5.4):  
The paint shall not show cracking or flaking when tested in accordance with ASTM D522 Method B. The size of the test panels shall be four inch by six inch.
- l. Freeze-Thaw Stability (Federal Specification TT-P-1952b, Section 4.5.7):  
The paint shall show no coagulation or change in consistency (ASTM D 562) greater than 15 Kreb Units.
- m. Heat Stability (Federal Specification TT-P-1952b, Section 4.5.8):  
The paint shall show no coagulation, discoloration or change in consistency (ASTM D 562) greater than 15 Kreb Units when tested in an oven at  $120 \pm 1^{\circ}\text{F}$ .
- n. Dilution Test:  
The paint shall be capable of dilution with water at all levels without curdling or precipitation such that the wet paint can be readily cleaned up with water only.
- o. Infrared Spectrophotometer Analysis (ASTM D3168):  
The paint shall be a reasonable match to the first approved Lot of paint supplied under this contract.

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Table – WATERBORNE TRAFFIC PAINT SPECIFICATION & TEST REQUIREMENTS SUMMARY				
THE SPECIFICATION	METHOD/Rule	COLOR	MIN	MAX
1. Pigment				
Reported % by weight	ASTM D3723	ALL	Per Manufacturer	Per Manufacturer
Lead Content	STM by Atomic Absorption Spectroscopy	Y		600 ppm
2. Vehicle				
Non Volatile Vehicle Solids	ASTM D3723	ALL	43%	
3. Finished Paint				
a. Pigment	Bid Spec	Y	Per Manufacturer	
b. VOC (lbs/gal)= [grams/liter]	6NYCRR, Part 205 Architectural & US-EPA 40 CFR Part 59	ALL		(0.85)=[101.853]
c. Total Solids Content				
by weight	ASTM D3723	ALL	76.0%	
by volume			62.0%	
d. Weight per Gallon	ASTM D1475	Y	13.0 Pounds	
e. Color	Munsell Book Notations and ASTM D1535 -- See Chart B Below			
f. Directional Reflectance	ASTM E1347	Y	54%	
g. Viscosity	ASTM D562 (B)	ALL	75 Krebs Units	95 Krebs Units
h. Field - No Track Time	Bid Spec	ALL		3 Minutes
i. Bleeding	Bid Spec	ALL	Visual Inspection showing no bleeding on asphalt test surface.	
j. Paint Opacity	ASTM D2805	ALL	0.95	
k. Abrasion Resistance	ASTM D4060	ALL		Average weight loss : 50 milligrams or 0.00167 oz.
l. Flexibility	Fed TT-P1952B/Sec 4.5.4& ASTM D522-B	ALL	Visual Inspection showing no cracking or flaking on a 4x6" Test panel	
m. Freeze Thaw Stability	Fed TT-P1952B/Sec 4.5.7 & ASTM D562	ALL		15 Krebs Units
n. Heat Stability	Fed TT-P1952B/Sec 4.5.8& ASTM D562	ALL		15 Krebs Units
o. Dilution	Bid Spec	ALL	Capability Statement Only	
p. Infrared Spectrophotometer Analysis	ASTM D3168	ALL	Reasonable match to first approved Lot supplied per season	

Table – WATERBORNE TRAFFIC PAINT SPECIFICATION & TEST REQUIREMENTS – Chart B				
Section 3 – Finished Paint; Part e. Color: Munsell Book Notations being viewed under North Standard Daylight per ASTM D1535 (for Yellow - use: Munsell Notation 10YR 8/14)				
Coordinate	1	2	3	4
x	0.485	0.517	0.492	0.468
y	0.426	0.462	0.471	0.45

(continued)

## 2.6 Packaging

The paint shall be packaged in shipping containers which meet U.S. Department of Transportation Code of Federal Regulations (CFR) Title 49, Parts 173 and 178. Each container shall be properly marked and labeled in accordance with CFR, Title 49, Part 172.

The exterior of all containers shall be clearly marked or colored in a manner to easily identify the color of the contained paint.

The paint shall be supplied in the following types of containers:

**A. 275 Gallon High Density Polyethylene IBC Totes**

Clean and sound, high-density polyethylene IBC totes.

Totes must be able to maintain structural integrity during transport and storage and be capable of being stacked. Totes may be reused only after being thoroughly cleaned out; no contaminants are allowed to be left in the totes when refilling. Totes may be refilled only by the paint manufacturer at the point of manufacture.

**B. 55 Gallon Removable Head Low Carbon Steel Drums**

New, removable head, low carbon steel containers, which are permanently lined so as to be compatible with the type of material being delivered within. (Note: Both cover and drum must be new). They shall have sufficient structural integrity to be capable of being stacked.

The minimum uncoated thickness of 55-gallon containers shall be 18 gauge for the body and bottom head, and 16 gauge for the removable head. Bolted ring closures shall be 12 gauge thickness.

The container covers shall provide a tight cover seal and shall be such that they can be readily resealed after partial use of the contents.

**C. 5 Gallon Lidded High-Density Polyethylene Pails**

New cylindrical high-density polyethylene (HDPE) plastic pails of 11 to 12 inches in diameter and 13 to 15 inches in height capable of holding 5 liquid gallons. Pails shall be provided with a metal handle. They shall be able to withstand temperatures below freezing and up to 150°F. Wall thickness shall be equal to or greater than 90 mil. The container will be USDA, UFC, UN 1H2/Y25/30 and NMFC compliant. Pails will be topped with a UN approved snap on type lid, gasketed for positive seal. Lids equipped with screw-capped pour spouts are acceptable if supplied at no additional cost.

**BIDDERS NOTE:**

**The 55-gallon drums and 275-gallon IBC totes remain the property of the Contractor and shall be promptly recovered by the Contractor at the request of the Authorized User at no additional cost. The 5-gallon pails shall be the property of the Authorized User and disposed of by the Authorized User in accordance with existing environmental procedures.**

(continued)

## 2.7 Returns of Empty Containers

The 275-gallon totes and 55-gallon drums will remain the property of the paint supplier. It is the responsibility of the paint supplier to remove the empty containers from the Authorized User's yard(s) in a timely manner after receiving notification from the Authorized User as to the readiness. It is the responsibility of the Authorized User to notify the Contractor when the location has accumulated a minimum of 12 empty 275-gallon totes or 60 empty 55-gallon drums at no additional cost. Smaller quantities may be picked up upon mutual agreement between paint supplier and Authorized User at no additional cost.

The Contractor shall schedule container pick-up at the Authorized User's site. The paint supplier or truck driver shall call the user to arrange for pick-up of the empty totes. Pickup may be scheduled Tuesdays through Thursdays between the hours of 10:00 AM and 3:00 PM excluding State holidays, unless the Authorized User approves other arrangements. It is the responsibility of the Authorized User to use their own equipment to place the fully discharged containers onto the truck as directed by the truck driver. The truck driver will be responsible for properly securing the empty totes for shipment.

NOTE: Resultant Contractor(s) will not be required to pick up containers having more than one inch of paint residue.

## 2.8 Labeling

The containers for the pigmented binders shall be clearly labeled so that they can be easily distinguished from other paints. Each container shall bear a label including the following information:

Although Consumer Product Safety Commission (CPSC) Regulation 16 CFR 1303 may not be applicable for these industrial type coatings, in the interest of safety and use by State Agencies, each container shall bear a label including one of the following clauses in a conspicuous location on the label with attention size lettering: "**FREE FROM LEAD HAZARD**"

Also, the following wording or its practical equivalent shall be included on the label:

"Do not apply on toys and other children's articles, furniture or interior surfaces of any dwelling or facility, which may be occupied or used by children. Do not apply on those exterior surfaces of dwelling units, such as window sills, porches, stairs or railings to which children may be commonly exposed."

The label shall also include the following: "**KEEP OUT OF REACH OF CHILDREN**".

The following designations shall also be required on all labels and/or packaging:

- Name and Address of Manufacturer.
- Manufacturer's Product Name and Identifying Number.
- Kind of paint, color name, and its identifying number.
- Volatile Organic Content (VOC), expressed in pounds per gallon.
- Net volume of paint in container.
- N.Y.S. Item Number.
- Use intended and directions for application.
- Precautionary instructions in regard to hazardous properties such as lead content, toxicity, fumes, storage temperature, minimum temperature for application, etc.

Each item that complies with NYS ENCON 6 NYCRR Part 205, shall bear on the label or container the following: "**PRODUCT COMPLIES WITH NYS ENCON Title 6 NYCRR. PART 205**".

NYS Contract Number, Production Batch Number and date of manufacture shall be clearly shown on each container (by stamping or pressure sensitive sticker or similar means).

**Improperly labeled containers may be rejected.**

(continued)

## 2.9 Quality Assurance Requirements

The Contractor shall be aware that samples may be requested prior to each painting season throughout the duration of the Contract, to ensure compliance with the detailed specifications at all times. Each delivery made may be subject to field sampling prior to its use by the Authorized User. The sampling procedure shall be random for an adequate supply of paint to test in accordance with the specifications listed below in Table – *Quality Assurance Process*.

Every season throughout the duration of the Contract the NYSDOT may assign inspection at the paint manufacturing facility to implement the quality assurance requirements. In that case the Contractor is required to notify assigned inspection agency of the intention to produce paint for this Contract at least 48 hours in advance of the production of the initial batch. Contact the Product Operation Office of the NYSDOT Materials Bureau at (518) 457-5642 for information on the assigned inspection agency.

The Contractor is responsible for quality control testing and certification of each batch (lot) of paint produced under this Contract. Once the manufacturer begins production of the Contract product, OGS Procurement Services may request sampling and testing for specification compliance in accordance with specifications listed below in Table – *Quality Assurance Process*.

Any yellow traffic paint product(s) that demonstrate a failure to perform may be removed from the award until such time as a yellow traffic paint product is resubmitted and NYSDOT Materials Bureau sends a notification via email to OGS Procurement Services indicating that the yellow traffic paint product has been approved.

**Failure of any yellow traffic paint product to meet the quality assurance requirements may result in liquidated damages assessed to the manufacturer by the State. See Liquidated Damages clause for more information.**

(continued)



<b>Table - QUALITY ASSURANCE PROCESS</b>		
<b><u>STEP</u></b>	<b><u>RESPONSIBILITY</u></b>	<b><u>DESCRIPTION</u></b>
<b><u>1.</u></b>	<b><u>Manufacturer</u></b>	Plans to manufacture a batch of paint.
<b><u>1A.</u></b>	<b><u>Manufacturer</u></b>	Assigns a batch number to the batch : <i>(A batch shall consist of a specific color of paint which is canned at one time from a single pouring tank. This may be the combination of two or more mix tanks that have been completely blended in the pouring tank, but may never represent more than a single pouring tank, filled once)</i> Each batch is assigned a unique batch number by the manufacturer
<b><u>1B.</u></b>	<b><u>Manufacturer</u></b>	Person responsible for scheduling the pour shall provide the inspection agency with the weekly production schedule at a minimum of 48 hours in advance of the first day of the production week that they plan to can their first batch of paint.
<b><u>1C.</u></b>	<b><u>Manufacturer</u></b>	Subsequent to inspection and sampling of each lot, samples shall be submitted to NYSDOT Materials Lab for testing before February 1 of the calendar year. <i>(Note: A partially filled container shall not be filled to capacity from another lot).</i>
<b><u>1D.</u></b>	<b><u>Manufacturer</u></b>	Of the first six (6) lots of paint manufactured three shall be yellow.
<b><u>*Failure to meet this requirement may result in liquidated damages assessed to the manufacturer by the State.</u></b>		
<b><u>2.</u></b>	<b><u>Inspection Agency</u></b>	Schedules an inspector to be at the manufacturing plant based on Step 1b as found above.
<b><u>3.</u></b>	<b><u>Agency Inspector</u></b>	If the manufacturer does not start to manufacture paint within two hours of the inspector’s scheduled arrival, the inspector shall leave**, otherwise proceed to step 4. <b><u>**The person responsible for scheduling the pour must reschedule by contacting the inspection agency at a minimum of 48 hours in advance of the time they plan to can the batch of paint. In addition, the manufacturer shall reimburse the inspection agency for all inspection/travel costs associated with the manufacturer’s inability to batch paint within two hours as described above.</u></b>
<b><u>4.</u></b>	<b><u>Agency Inspector</u></b>	Arrives at manufacturing plant and visually inspects the pouring tank to ensure that all paint to be canned comes from that tank.
<b><u>4A.</u></b>	<b><u>Agency Inspector</u></b>	If the pouring tank contains paint from two or more mix tanks, verifies that the pouring tank contains mixing equipment.
<b><u>4B.</u></b>	<b><u>Agency Inspector</u></b>	Inspects the cleanliness of the containers that are to receive the paint to help avoid possible contamination of the material.

(continued)

<b>Table - QUALITY ASSURANCE PROCESS (cont'd)</b>		
<b><u>STEP</u></b>	<b><u>RESPONSIBILITY</u></b>	<b><u>DESCRIPTION</u></b>
<b><u>4C.</u></b>	<b><u>Agency Inspector</u></b>	Checks the labels on the containers to ensure compliance in accordance with this Contract.
<b><u>4D.</u></b>	<b><u>Agency Inspector</u></b>	Visually determines the quantity of paint in the mixing tank.
<b><u>4E.</u></b>	<b><u>Agency Inspector</u></b>	Insures that the batch number for the batch to be canned is either already marked on the top or side of the containers, or the proper equipment is available to mark the cans as soon as they are filled
<b><u>5.</u></b>	<b><u>Agency Inspector</u></b>	A sample shall consist of a minimum of a one-pint can taken during the canning process. A total of 1 one-pint (16 liquid oz) sample of the paint shall be taken from each batch.
<b><u>5A.</u></b>	<b><u>Agency Inspector</u></b>	Two samples shall be taken from approximately the mid-point of each third of the pour for a total of six samples
<b><u>5B.</u></b>	<b><u>Agency Inspector</u></b>	Three (3) red tape seals shall be placed on the pint containers at 120-degree intervals and parallel to the long axis of the container, equally divided between the cover and the container side. <b>See Illustration A</b>
<b><u>6.</u></b>	<b><u>Agency Inspector</u></b>	Identifies the samples by marking the following information on the side of each can.
		<ul style="list-style-type: none"> <li>a. Lot Number</li> <li>b. Batch Number</li> <li>c. Group/Item Number</li> <li>d. Manufacturer's name and location</li> </ul>
<b><u>7.</u></b>	<b><u>Agency Inspector</u></b>	Verifies that the total quantity canned is reasonably close to the amount originally observed in the mixing tank.
<b><u>8.</u></b>	<b><u>Agency Inspector</u></b>	Prior to Certification, the inspector shall apply NYSDOT security seals as shown in <b>Illustrations A, B and C</b>
<b><u>9.</u></b>	<b><u>Agency Inspector</u></b>	<p>Completes the BR240a form <u>per</u> lot, <b>See Illustration D</b>. The Br240a shall be submitted as follows:</p> <p><b>Green</b> and <b>White</b> copies submitted with inspector's report to Product Operations</p> <p><b>Pink</b> retained by the inspector (<i>manufacturer is permitted to make a copy for their record</i>).</p> <p><b>Yellow</b> and <b>Buff</b> go with the sample(s) to NYSDOT Materials Lab.</p>
<b><u>10.</u></b>	<b><u>Agency Inspector</u></b>	Packages samples, including Form BR-240a enclosed in a BR-241 envelope and places a red tape seal over tab of envelope to assure seal.
<b><u>11.</u></b>	<b><u>Manufacturer</u></b>	Assumes the responsibility and cost of transmitting all samples with proper forms to the NYSDOT Materials Lab for the duration of the Contract.
<b><u>12</u></b>	<b><u>NYSDOT Materials Lab</u></b>	Performs required test(s).

(continued)

<b>Table - QUALITY ASSURANCE PROCESS (cont'd)</b>		
<b><u>STEP</u></b>	<b><u>RESPONSIBILITY</u></b>	<b><u>DESCRIPTION</u></b>
<b><u>13.</u></b>	<b><u>Product Operations</u></b>	Reviews test results and takes appropriate action of Accept or Reject for a tested lot.
<b><u>14.</u></b>	<b><u>Product Operations</u></b>	Notifies the OGS Procurement Services contract administrator, the manufacturer and the inspection agency of <b>Acceptance</b> or <b>Rejection</b> for a tested lot.
<b><u>15.</u></b>	<b><u>Inspection Agency</u></b>	Schedules to go back to manufacturer to complete inspection process based on notification of accept or reject from Product Operations ( <i>this must occur within 48 hours of notification</i> ).
<b><u>16.</u></b>	<b><u>Agency Inspector</u></b>	Prior to Certification, if a lot is <b>Accepted</b> , the inspector places appropriate acceptance seals on containers from accepted lot ( <b>See Illustrations A, B and C</b> ) and checks to see that manufacturer placed labels on accepted containers with required information.
<b><u>17.</u></b>	<b><u>Agency Inspector</u></b>	Prior to certification, if a lot is <b>Rejected</b> , the inspector removes all red seals on containers from rejected lot. Manufacturer is <b>not</b> permitted to release rejected paint to the Regions.
<b><u>18.</u></b>	<b><u>Manufacturer –</u></b>	Manufacturer is now permitted to release accepted paint as requested.
<b><u>19.</u></b>	<b><u>Manufacturer On Certification</u></b>	The manufacturer is permitted to release paint to customers <b>without</b> the sampled and/or accepted seals affixed to the containers. However, the manufacturer shall furnish a certificate of compliance with a shipment of certified paint.
<b><u>19A.</u></b>	<b><u>Manufacturer On Certification</u></b>	NYSDOT will monitor the quality of the paint while the manufacturer is permitted to supply on certification. The monitor program will require the manufacturer to notify the inspection agency in accordance with Step 1b of this appendix
<b><u>20.</u></b>	<b><u>Agency Inspector</u></b>	Under <u>Certification</u> , the monitoring program shall require the inspector to take samples at a rate of 1 per 5 lots per color or as directed by NYSDOT. ( <i>NYSDOT reserves the right to sample and test every lot for Accept or Reject consideration in the event the manufacturer is unable to demonstrate acceptable quality control or is no longer permitted to supply under <u>Certification</u>.</i> )
<b><u>21.</u></b>	<b><u>Manufacturer</u></b>	The manufacturer shall keep all Inventory Records up to date and available upon request.

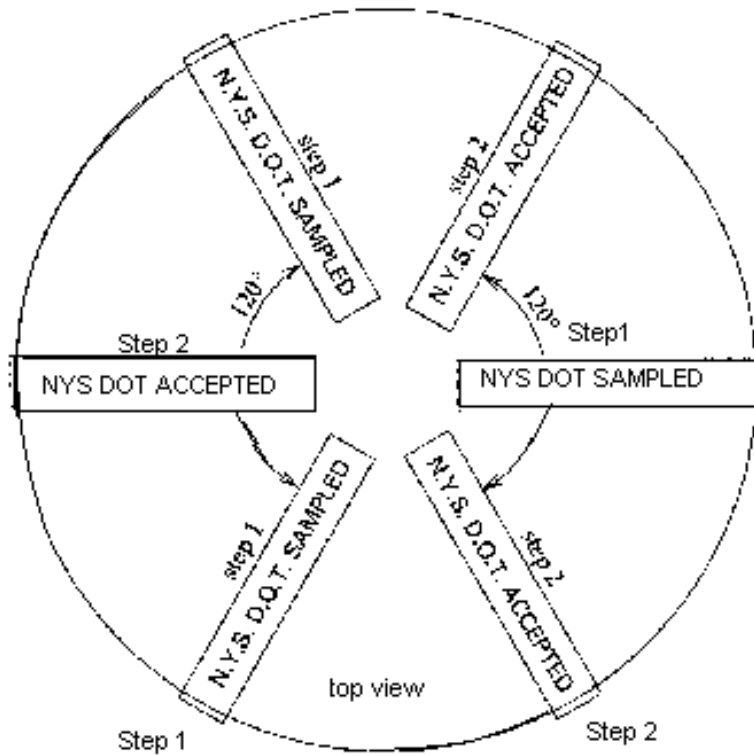
**Shipping & Reporting**

All Production Samples along with Form BR240a (Green & White copies) are to be shipped to:

Materials Bureau - Chemical Testing Laboratory  
New York State Department of Transportation Laboratories  
7 Harriman Campus Road  
Albany, NY 12206  
Attn.: Christopher Euler

(continued)

Illustration A: NYSDOT security seal – 5-gallon pail or 1 pint container

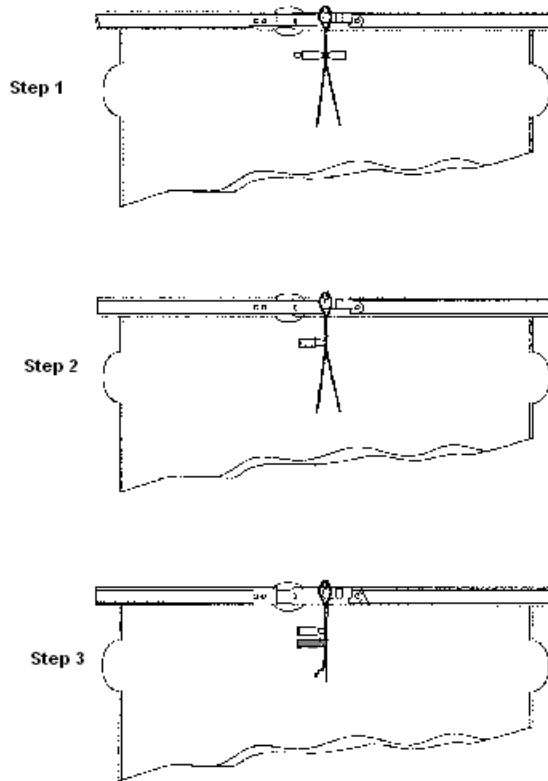


5 Gallon Container or  
1 Pint Container

Not to Scale

Note: Three (3) Red and Green tape shall be placed at 120 degree intervals and parallel to the long axis of the container equally divided between the cover and the container side as shown above. The cover lugs shall be considered as a portion of the cover and one end of each seal shall be placed in contact with a lug..

**Illustration B: NYSDOT security seal – 55-gallon drum container**

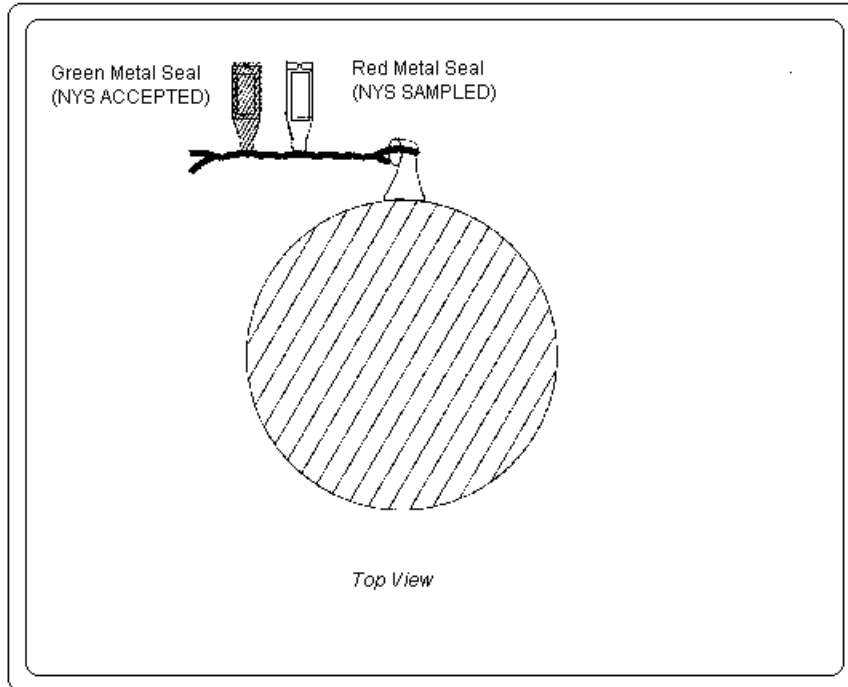


**55 Gallon Container**

*Not to Scale*

Note: The wire shall be drawn securely and tightly through the eyelet. The Red & Green Seals shall be certified in such a manner that the connection can not be loosened without destroying the seal

**Illustration C: NYSDOT security seal – 275-gallon IBC tote**



**High Density Polyethylene IBC Tote**

*Not to Scale*

Note: The wire shall be drawn securely and tightly through the eyelet.  
The Red and Green Metal Seals shall be certified in such a manner that the connection can not be loosened without destroying the seal.

Illustration D: NYSDOT BR-240a form

BR 240a (11/74) SAMPLE AND ACCEPTANCE TRANSMITTAL NYSDOT MATERIALS BUREAU		SERIAL NO. <b>257232</b>	DATE REC'D	TEST NO.		
To: _____ Material Represented by the Sample Described Below Was _____						
On _____ For _____						
<small>(Action Official Only When Validated Below By The Materials Bureau)</small>						
<b>UPPER PORTION FOR MATERIALS BUREAU ONLY — INSPECTOR TO COMPLETE ALL APPLICABLE BOXES BELOW</b>						
16. Additional Info (See Instructions on Rear)  <b>Batch No.</b>  <b>Quantities of Containers</b>  <b>6 - 1 pint samples sent in by Manufacturer</b>  <small>RETAIN PINK COPY FOR YOUR RECORDS FORWARD ALL OTHERS TO MATERIAL BUREAU</small>	1. MATERIAL <b>White or Yellow Water-Borne Traffic Paint</b>		2. Item No. <b>727-0600</b>	3. DATE SAMPLED <b>XX/XX/XX</b>	4. CONTRACT NO. <b>Group #</b>	
	5. SUPPLIER AND LOCATION <b>NAME, CITY, STATE</b>			6. QUANTITY IN LOT <b>XX GALLONS</b>	7. LOT NO. <b>XX</b>	
	8. MANUFACTURER LOCATION (IF DIFFERENT THAN ABOVE) <b>LEAVE BLANK</b>			9. BATCH NO. <b>XXXXXX</b>	10. DATE OF MFG. <b>XX/XX/XX</b>	
	11. SAMPLED AT <input type="checkbox"/> MILL <input type="checkbox"/> PLANT <input type="checkbox"/> JOB		12. TYPE <input type="checkbox"/> CONTROL SAMPLE <input type="checkbox"/> INFO. Sample <input type="checkbox"/> SPR. SAMPLE APPROVED LIST MATERIAL <input type="checkbox"/> CERTIFIED MAT.		13. SAMPLED FROM <b>POUR</b>	
	15. CONTRACTOR AND PROJECT LOCATION <b>LEAVE BLANK</b>			14. SAMPLED BY (INC. DIST # or AGCY) <b>NAME, I.A. CODE</b>		
			MATERIALS BUREAU VALIDATION			

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BR 240a (11/74) SAMPLE AND ACCEPTANCE TRANSMITTAL NYSDOT MATERIALS BUREAU		SERIAL NO. <b>257232</b>	DATE REC'D	TEST NO.		
To: _____ Material Represented by the Sample Described Below Was _____						
On _____ For _____						
<small>(Action Official Only When Validated Below By The Materials Bureau)</small>						
<b>UPPER PORTION FOR MATERIALS BUREAU ONLY — INSPECTOR TO COMPLETE ALL APPLICABLE BOXES BELOW</b>						
16. Additional Info (See Instructions on Rear)  <b>Part A - White or Yellow Quantity of Part A Gallons</b> <b>Part B - Quantity of Part B Gallons</b> <b>2 - 1 pint samples of Part A</b> <b>1 - 1 pint sample of Part B</b> <b>Sent in by Manufacturer</b>  <small>RETAIN PINK COPY FOR YOUR RECORDS FORWARD ALL OTHERS TO MATERIAL BUREAU</small>	1. MATERIAL <b>White or Yellow Epoxy Refl. Pav. Markings</b>		2. Item No. <b>727-03</b>	3. DATE SAMPLED <b>XX/XX/XX</b>	4. CONTRACT NO. <b>Group #</b>	
	5. SUPPLIER AND LOCATION <b>NAME, CITY, STATE</b>			6. QUANTITY IN LOT <b>XX GALLONS</b>	7. LOT NO. <b>XX</b>	
	8. MANUFACTURER LOCATION (IF DIFFERENT THAN ABOVE) <b>LEAVE BLANK</b>			9. BATCH NO. <b>Part A xxxxxx Part B xxxxxx</b>	10. DATE OF MFG. <b>Part A xx/xx/xx Part B xx/xx/xx</b>	
	11. SAMPLED AT <input type="checkbox"/> MILL <input type="checkbox"/> PLANT <input type="checkbox"/> JOB		12. TYPE <input type="checkbox"/> CONTROL SAMPLE <input type="checkbox"/> INFO. Sample <input type="checkbox"/> SPR. SAMPLE APPROVED LIST MATERIAL <input type="checkbox"/> CERTIFIED MAT.		13. SAMPLED FROM <b>POUR</b>	
	15. CONTRACTOR AND PROJECT LOCATION <b>LEAVE BLANK</b>			14. SAMPLED BY (INC. DIST # or AGCY) <b>NAME, I.A. CODE</b>		
			MATERIALS BUREAU VALIDATION			

(continued)

## SECTION 3: CONTINUOUS RECRUITMENT

### 3.1 Product Approval

Contractor will submit a request via email to OGS Procurement Services for submission of yellow traffic paint product(s) sample for testing and approval by NYSDOT Materials Bureau.

The email will include the following information relating to the yellow traffic paint product(s) sample to be submitted:

- Manufacturer of Paint
- Manufacturer Product Name
- Product Identification Number
- Product Safety Data Sheet and mix instructions

OGS will then provide contact information to facilitate Contractor sending samples to NYSDOT Materials Bureau. All communications will be through the OGS Procurement Services designated contacts.

Contractor must ship eight (8) one-pint (16 liquid oz) samples which are representative of the yellow traffic paint product being bid. The samples shall be supplied in unbreakable plastic or steel containers with tightly sealed and secured lids and shall be labeled per Section 2.8, Labeling. Contractor must also provide OGS with proof of shipping via email.

**Product samples shall be submitted within 30 calendar days of submission of the request.**

Additional samples may be requested as necessary. Additional information regarding samples can be found in Section 4.39, Samples.

The NYSDOT Materials Bureau shall confirm to NYS OGS Procurement Services via email that the yellow traffic paint product(s) being considered for award has met all required approvals. Any yellow traffic paint product(s) not confirmed to have been approved by NYSDOT Materials Bureau will not be eligible for award.

Contractor will be provided confirmation via email from OGS Procurement Services that the yellow traffic paint product submitted has been approved by NYSDOT Materials Bureau and has been determined to be acceptable for award.

### 3.2 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.

(continued)



### 3.3 Subsequent Periodic Recruitment

During the term of the Contract, the State reserves the right to conduct subsequent future Periodic Recruitments. The purpose of future Periodic Recruitments will be to:

- Add additional Products and/or
- 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.

### 3.4 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.

(continued)

## Section 4: TERMS AND CONDITIONS

### 4.1 Contract Term and Extensions

The Contract will be in effect until December 31, 2020. 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 continuous recruitment or subsequent periodic recruitment. At the State's option, the Contract may be extended for 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 Price

Price shall include all customs duties and charges and be net, F.O.B. destination any point within the state of New York, as designated by the Authorized User, including dock delivery (unloading of the product will be performed by the Authorized User, unless previously agreed by the vendor). Additional fees may be charged to the purchaser when delivery to point of use is not possible via dock, any other door, stairway or elevator freight service and/or when specialized service is requested in writing by the purchaser. Such costs shall be prepaid and added to the invoice. Authorized Users will not be charged for delivery to their building location since price is FOB destination; Authorized User must be informed of the additional cost prior to delivery and agree to the additional charge.

Note: If it is determined the Contractor is charging excessive amounts for specialized delivery services, the state may seek reimbursement for such amounts, may remove the Contractor from the list of eligible Bidders, and may cancel the Contract.

(continued)

#### 4.3.1 Containers

Both 55-gallon and 275-gallon capacity containers remain the property of the Contractor and are to be removed **at no additional cost**. Upon notification, Contractor shall be responsible for picking up and removing at their own expense, all drums and totes furnished by the Contractor during the Contract period. See Section 2.6, *Packaging* for additional information.

#### 4.4 Quick Quote

Authorized Users may select the appropriate Contractor to perform their particular project by using the quick quote worksheet form. During the course of selecting and awarding one of the Contractors listed in this Solicitation, Authorized Users should try to obtain lower prices and Contractors may wish to lower their Contract prices for various reasons, i.e., excess supply, slow business, etc. Each quick quote situation is unique, and the price is firm for that particular purchase only. If bid security is a concern, the Authorized User may require bids to be sealed and/or opened publicly.

The use of the Quick Quote form will be optional (at the Authorized User's discretion). The Quick Quote form will be published at the NYS OGS website (on the award's landing page) once the Contract is awarded.

The Quick Quote form should be sent to the Contractors in its MS Excel format. The Contractor responding should quote every single line item that the Authorized User is requesting so an equal comparison can be made.

Agencies using the Quick Quote form are required to award to the lowest responsive bid meeting the Authorized User's requirements outlined in the requested quote, including guaranteed delivery. There are no negotiations permitted following the "quick quote" and prices cannot be changed once offered. If award is made to other than the lowest bid, the Authorized User must prepare detailed documentation explaining the action taken for the failure to meet requirements (i.e., the low Contractor could not provide the product in the time frame required, Contractor did not have needed quantity, etc.). This explanation along with the quick quote responses must be made a part of the procurement record.

Contractors are not required to respond or to lower prices when they receive a quick quote. They may quote the Contract price.

#### 4.5 Price Updates

Prices set forth in this Contract are firm through December 31, 2019. Beginning January 1, 2020 and then every six months thereafter the prices are then subject to an increase or decrease every six months in accordance with the provisions of this clause.

The prices shall be adjusted on the basis of the originally published Producer Price Indices (PPIs) specified in this section, published by the US Department of Labor, Bureau of Labor Statistics, using the weighting specified below. Any published figure used that is preliminary will not be updated should a different figure replace it as permanent in the future.

The adjustment shall be based on the percentage of increase or decrease in the PPIs as follows. A base index of May 2019 and an adjusted index of October 2019 shall be utilized. The adjustment shall be based on the percentage of increase or decrease in the indices over this period using the weighting specified below. The adjusted index will then become the base index for the price update period immediately following. Each succeeding six months will follow this format (including any Contract extensions or renewals). Price increases or decreases shall not exceed 10%.

(continued)

**4.5 Price Updates (cont'd)**

The following US Department of Labor Producer Price Indices (PPIs) will be used in determining the price updates that will apply to Contracts awarded under this procurement:

**Traffic Paint (Waterborne – Lead-Free):**

<u>Index Name</u>	<u>Series ID#</u>
<b>Group:</b> Chemicals and allied products (Not Seasonally Adjusted) <b>Item:</b> Special purpose coatings, incl. marine, industrial & construction coatings	WPU06210301
<b>Industry:</b> General freight trucking, long-distance LTL <b>Product:</b> Primary services	PCU484122484122p

**90% of the price update of awarded Contract prices will be adjusted** according to activity reported by the United States Department of Labor Producer Price Index (PPI) for Special purpose coatings, incl. marine, industrial & construction coatings, Series ID#: WPU06210301, not seasonally adjusted.

**10% of the price update** of awarded Contract prices will be adjusted according to activity reported by the US Department of Labor, Producer Price Index (PPI) Industry Data for General Freight Trucking. Series ID#: PCU484122484122p.

Should any referenced Producer Price Indices (PPIs) become discontinued during the course of the Contract, they will be replaced by alternative PPIs also published by the US Department of Labor, Bureau of Labor Statistics, and adjustments will be calculated based on the same methodology as outlined above, but with the data from the new replacement index, , and adjustments will be calculated based on the latest six months of data available in the month preceding the effective date of the price adjustments.

The Office of General Services, Procurement Services will notify all interested parties of effected price adjustments by way of a Contract update.

**4.6 Product Addition and Removal**

In order to add new yellow traffic paint product(s), the Contractor must demonstrate that the yellow traffic paint product to be added:

- has been approved by NYSDOT Materials Bureau per Section 3.1, *Product Approval*
- meets the scope as defined in Section 1.5, *Overview & Scope*

Contractors shall submit their updated yellow traffic paint product information to the OGS Procurement Services contract administrator pursuant to the requirements of this section for review and written approval prior to issuing to Authorized Users.

Contract documents will be updated to include the new approved yellow traffic paint product(s) upon approval by OGS. Any request for yellow traffic paint product update not received in accordance with this section shall be deemed denied.

The Contractor shall provide OGS with one electronic copy of the updated yellow traffic paint product information. No yellow traffic paint product update will be granted to any Contractor who has outstanding Sales Reports, Proof of Insurance or any other documentation that is required under the resulting contract.

Contractor may request the removal of a yellow traffic paint product at any time.

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#### 4.7 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.

#### 4.8 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.

#### 4.9 Volume Discounts

Bidders may offer additional volume discounts. Volume discounts may be applied per purchase order, cumulatively per Authorized User, and cumulatively statewide.

Volume discounts shall be defined and applied as follows:

1. Purchase order volume discounts shall be additional discounts applied to individual purchase orders over a specified dollar amount.
2. Cumulative Authorized User volume discount shall be additional discounts applied to all future orders made by an individual Authorized Users once an established volume has been met by that agency.
3. Cumulative statewide volume discounts shall be additional discounts applied to all future orders for all orders once an established volume has been met under this Contract.

#### 4.10 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).

Purchase orders where deferred shipments are requested shall clearly detail the requirement dates. Contractor must promptly inform the buyer of any deferred shipment in which the requested delivery date extends beyond a current pricing period into a new scheduled price update period, so that proper pricing will be applied at the time of invoicing.

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#### 4.11 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.

#### 4.12 Minimum Order

The minimum order for this Contract is 3,000 gallons. This minimum may be achieved through any combination of items (totes, drums, pails) for a single location.

Contractor may elect to honor orders for less than the minimum order. For such orders, at the Contractor’s option, shipping costs from the Contractor’s address (as stated in bid) may be added to invoice with a copy of the freight bill. Shipping costs are to be prepaid by Contractor and such orders are to be shipped on an F.O.B. destination basis. All such orders must be shipped by the most economical method for the proper delivery of the product unless special instructions are stated on the order by the agency.

#### 4.13 Minimum Production Batch Size

Minimum production batch size shall be 2,000 gallons. A batch is further defined as appropriate in the quality assurance section located in Section 2.9, *Quality Assurance Requirements*.

#### 4.14 Invoicing and Payment

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

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

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

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

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#### 4.15 Product Delivery

##### General

Delivery shall be expressed by the average (or usual) number of calendar days required to ship and complete the product delivery after receipt of a purchase order. The vendor shall be responsible for the delivery of product ordered to any location within New York State. Product will be required as soon as possible, and delivery time may be considered by the Authorized User issuing a purchase order.

Unless otherwise stated on purchase order, delivery is required within 30 calendar days after Contractor's receipt of purchase order. **Authorized Users may not** without prior written consent of the Contractor **demand** delivery prior to 30 days after Contractor's receipt of said order.

Contract users may request scheduled deferred deliveries. With the exception of NYSDOT orders, all schedules requiring delivery to be delayed beyond 90 days after Contractor's receipt of order must have the prior approval of the related Contractor and with such allowance noted on the given purchase order. All deferred shipping may be subject to a price update if the requested shipment overlaps scheduled price update periods.

Each individual instance of Contractor's failure to conform to the above delivery requirements **plus 10 calendar days** (grace period) shall constitute sufficient reason to allow the related Authorized User to obtain overdue material deemed under the circumstances comparable by the Authorized User on the open market charging any increased cost over Contract price to the Contractor's account as well as triggering the *Liquidated Damages* clause found in Section 4.16 of this document. Resulting Contractor(s) are cautioned that repeated failure to deliver within the guaranteed delivery period will be sufficient cause for the OGS Procurement Services to cancel the Contract or any unit portion thereof and authorize open market purchase of applicable requirements charging any increased cost over Contract price to the Contractor's account, without the need to await passage of the stated grace period.

##### Shipping Dates and Delivery Time

Contractor shall provide written acknowledgement of orders within five (5) business days after receipt of order which will include an anticipated shipping date of each order

If shipment will not be made within the delivery time, 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 reasons for the delay and the latest date the product will be shipped. Notification does not negate the Contractor's responsibility for shipment of product as soon as possible, nor the conditions noted under Section 4.16, *Liquidated Damages*. Should the delay not be acceptable to the Authorized User, appropriate Contract default proceedings will be initiated. Failure to supply timely written notification of delay may be cause for default proceedings.

All correspondence on shipping dates and delivery time shall be directed to the ordering entities' specified contact person.

Deliveries shall be made inside the yard facility at destinations as indicated on the purchase order. Advance notice of pending shipment shall be issued in writing to the Authorized User at least 7 days prior to delivery, unless shipment is being made in under one week from receipt of order. If this situation occurs, Contractor shall notify the Authorized User of the shipment date as soon as it is scheduled.

**Actual physical arrival and delivery of material must be scheduled by the carrier, contacting and coordinating with the recipient no more than 48 hours prior to a truck's arrival at the delivery site.** Delivery will be scheduled no earlier than 7:00 a.m. or later than 3:00 p.m. and will have a 2-hour window of opportunity within those parameters, Tuesday through Thursday, excluding Holidays, ***or as otherwise agreed to as mutually acceptable between the carrier and recipient.*** Delivery will only be accepted within the time period scheduled. At the discretion of the Authorized User, shipments arriving outside of the scheduled time frame may be expected to reschedule the shipment (if late) or return at the originally scheduled time (if early). Any and all changes required as a result of such arrivals are at the carrier's expense.

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**Delivery Condition**

Contractor shall make no shipment that exposes the product at any time during transit to conditions detrimental to the product. Product must be delivered strictly in accordance with specifications and shall be "Ready for Use." In the event that an item is delivered with a deviation or deficiency, the Contractor shall correct such deficiencies within four (4) business days of written notification of said deficiency or deviation. Otherwise the State has the option of making the corrections independently at the Contractor's expense and imposing the Liquidated Damages clause as found herein.

**Delivery Certification**

Contractor shall secure a signed receipt from Authorized User certifying to delivery of product. In the event deficiencies are later noted and a properly signed receipt is not available, Contractor will be responsible.

**NYSDOT Annual Projections**

Proper and timely application of the subject paint is of obvious and paramount importance to maintaining safe highways for the motoring public. In order for the NYSDOT to properly address its attendant responsibilities, which include maintenance of painted traffic markings, and efficiently utilize available resources including limited manpower and equipment during the proper marking season, it is imperative that the contracted paint supply be provided on a timely basis and consist of acceptable quality materials. It is thus noted that with respect to deliveries time is of the essence.

Annually through the term of the Contract, the NYSDOT will develop a schedule containing a projection estimating the paint quantity and delivery breakdown of traffic paint for use by NYSDOT for the upcoming paint season. The schedule will be developed in recognition of NYSDOT's overall program responsibilities coupled with the application rate to be expected from available manpower and equipment resources. The subject schedule will reflect approximate delivery requirements which will allow effective uninterrupted utilization of these resources during the forthcoming marking season. Note that the schedule is an estimate, and not a guarantee of actual quantity, need or order. See the "ESTIMATED QUANTITIES" clause for additional clarification.

**4.16 Liquidated Damages**

In the event of a delay or default in any delivery for items contracted, providing such delay or default is not directly attributable to a material fault of the ordering Authorized User, an Authorized User shall be entitled to and shall assess against the vendor as liquidated damages, a sum calculated as follows:

Two-hundred fifty dollars (\$250.00) dollars per business day, not as a penalty but as liquidated damages, , to compensate for delay and other losses, detriments and inconveniences attendant upon such delay from the grace period, commencing from the time delivery was due under the Contract. Saturdays, Sundays, and State legal-holidays will be excluded from the computations for the assessment of Liquidated Damages.

A grace period of ten (10) business days commencing on and including the Contract date for delivery, shall be extended to the vendor prior to the assessment of such liquidated damages. Assessment of liquidated damages will then commence on the forty-fifth (45th) calendar day after placement of the purchase order by mail, or 41 calendar days after placement electronically. Notice is hereby given to the vendor that despite the extensions of the grace period herein specified, time shall be and is of the essence in regard to the delivery of these products to the Authorized User.

Whereas shipments of paint may not commence at the beginning of an annual painting season until the season's initial manufacturing run has been tested and independently certified as meeting the required specifications, such testing and any delays caused as a result of the testing process negate the liquidated damages clause. Once initial shipments have been approved for release, the terms of this clause become active. However, should any such initial delays be caused by the failure of the Contractor to deliver the required sample requirements in a timely manner, or of the product to meet the stated specifications and requirements, the Contractor may be held liable for Liquidated Damages as stated here in.

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The actual delivery date will be used in computing the total amount of liquidated damages on a purchase order. Liquidated damages, if assessed, shall be deducted from payments due the Contractor on each invoice for purchase orders that are delivered late.

#### 4.17 Product Returns and Exchanges

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, Contractor errors otherwise not specified, or Products returned or exchanged due to Authorized User errors, shall be replaced with specified Products or the Authorized User shall be credited or refunded for the full purchase price.

Products shall be replaced within 10 business days of written notification to the Contractor of the Authorized User's intent to return or exchange the Product. Contractor can charge only 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 net price of the returned or exchanged Product.

Any credit or refund shall be applied against the next bill/invoice submitted by the Contractor to the Authorized User. If no credit or refund, or only a partial credit or refund, is made in such fashion, the Contractor shall pay to the Authorized User the amount of such credit or refund or portion thereof still outstanding, within 30 calendar days of demand.

#### 4.18 Unanticipated Excessive Purchase

The State reserves the right to negotiate lower pricing, or to advertise for Bids, for any unanticipated excessive purchase.

#### 4.19 Contract Administration

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

Contractor shall provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Information regarding the Customer Service, Emergency Contact, and Contract Administrator shall be set forth in 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.

#### 4.20 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

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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/>.

#### **4.21 N.Y. State Finance Law § 139-I**

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

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

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

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

#### **4.22 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 Insurance Requirements.

#### **4.23 Report of Contract Usage**

Contractor shall submit Report of Contract Usage including total sales to Authorized Users of this Contract by Contractor, 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.

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

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**4.24 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**

I. New York State Law

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

II. General Provisions

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

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

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

III. Equal Employment Opportunity (EEO)

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

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- 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](mailto: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.
    - 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.

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**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>

**4.25 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](mailto: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/>

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#### 4.26 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*.

##### Recycled Certification

The Bidder must submit upon request a statement certifying the actual percentages of recycled material (the same or larger percentages than originally certified to) in the yellow traffic paint product furnished for the contract. Minimum requirements are listed in the individual products' detailed specification.

#### 4.27 Surplus/Take-Back/Recycling

- I. A State Agency is reminded of its obligation to comply with the NY State Finance Law § 167, Transfer and Disposal of Personal Property, and § 168, The Management of Surplus Computer Equipment, regarding transfer and disposal of surplus personal property before utilizing take-back, recycling, or other options for disposition of equipment that is still in operable condition.
- II. If Contractor offers a take-back/recycling program, then Contractor shall provide a record of disposition to each Authorized User who participates in the take-back/recycling program for units transferred for disposition. Contractor shall provide documentation that the units were disposed of in an environmentally sound manner in compliance with applicable local, state and federal laws. See Section III below for specific requirements governing electronic equipment recycling.
- III. The NYS Department of Environmental Conservation ("DEC") Electronic Equipment Recycling and Reuse Act ("Act") (Environmental Conservation Law, Article 27, Title 26, Electronic Equipment Recycling and Reuse), requires manufacturers to establish a convenient system for the collection, handling, and recycling or reuse of electronic waste. If Contractor is a manufacturer of electronic equipment covered by the Act, Contractor agrees to comply with the requirements of the Act. More information regarding the Act can be found on the DEC website at: <http://www.dec.ny.gov/chemical/65583.html>
- IV. If a Contractor offers a take-back/recycling program or offers an electronic equipment recycling program pursuant to the Act, and an Authorized User participates in same, then the Authorized User shall ensure the destruction of all data from any hard drives surrendered with the machines/covered electronic equipment. Contractor shall not require an Authorized User to surrender the hard drive, as an Authorized User may wish to retain the hard drive for security purposes. Contractor shall advise the Authorized User in advance if the retention of the hard drive results in additional fees or reduction in trade-in value. It is recommended that an Authorized User use a procedure for ensuring the destruction of confidential data stored on hard drives or other storage media that meets or exceeds the National Institute of Standards and Technology ("NIST") Guidelines for Media Sanitation as found in NIST Special Publication 800-88.

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#### **4.28 Environmental Attributes and NYS Executive Order Number 4**

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. 4 (Establishing a State Green Procurement and Agency Sustainability Program), which imposes certain requirements on State Agencies, authorities, and public benefit corporations when procuring Products. More information on Executive Order No. 4, including specifications for offerings covered by this Contract, may be found at <https://ogs.ny.gov/greenny/>. State entities subject to Executive Order No. 4 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.

#### **4.29 Consumer Products Containing Mercury**

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

#### **4.30 Overlapping Contract Products**

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

#### **4.31 Preferred Source Products**

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

#### **4.32 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. The OSC Help Desk contact information is located at

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<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](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.

#### **4.33 "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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#### 4.34 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.

#### 4.35 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.

#### 4.36 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.

#### 4.37 Centralized Contract Modifications

- A. OGS, an Authorized User, or the Contractor may suggest modifications to the Centralized Contract or its Appendices. Except as specifically provided herein, modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the parties. Modifications may take the form of an update or an amendment. "Updates" are changes that do not require a change to the established Centralized Contract terms and conditions. A request to add new Products at the same or better price level is an example of an update. "Amendments" are any changes that are not specifically covered by the terms and conditions of the Centralized Contract, but inclusion is found to be in the best interest of the State. A request to change a contractual term and condition is an example of an amendment.
- B. Updates to the Centralized Contract and the Appendices may be made in accordance with the contractual terms and conditions to incorporate new Products, make price level revisions, delete Products, or to make such other updates to the established Centralized Contract terms and conditions, not resulting in a change to such terms and conditions, which are deemed to be in the best interest of the State.
- C. OGS reserves the right to consider modifications which are not specifically covered by the terms of the Centralized Contract but are judged to be in the best interest of the State. Such modifications are deemed amendments to the Centralized Contract and may require negotiations between Contractor and OGS before execution.
- D. Modifications proposed by OGS or an Authorized User, including updates and amendments, shall be processed in accordance with the terms of the Centralized Contract and Appendix B, *Modification of Contract Terms*.

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**4.39 Samples**

- A. **Bidder Supplied Samples** - The Commissioner reserves the right to request from the Bidder/Contractor a representative sample(s) of the Product offered at any time prior to or after award of a Contract. Unless otherwise instructed, samples shall be furnished within the time specified in the request. Untimely submission of a sample may constitute grounds for rejection of the Bid or cancellation of the Contract. Samples must be submitted free of charge and be accompanied by the Bidder's name and address, any descriptive literature relating to the Product and a statement indicating how and where the sample is to be returned. Where applicable, samples must be properly labeled with the appropriate Solicitation or Contract reference.

A sample may be held by the Commissioner during the entire term of the Contract and for a reasonable period thereafter for comparison with deliveries. At the conclusion of the holding period, the sample, where feasible, will be returned as instructed by the Bidder, at the Bidder's expense and risk. Where the Bidder has failed to fully instruct the Commissioner as to the return of the sample (i.e., mode and place of return, etc.) or refuses to bear the cost of its return, the sample shall become the sole property of the receiving entity at the conclusion of the holding period.

- B. **Enhanced Samples** - When an approved sample exceeds the minimum specifications, all Product delivered must be of the same enhanced quality and identity as the sample. Thereafter, in the event of a Contractor's default, the Commissioner may procure a Product substantially equal to the enhanced sample from other sources, charging the Contractor for any additional costs incurred.
- C. **Conformance with Samples** - Submission of a sample (whether or not such sample is tested by, or for, the Commissioner) and approval thereof shall not relieve the Contractor from full compliance with all terms and conditions, performance related and otherwise, specified in the Solicitation. If in the judgment of the Commissioner the sample or Product submitted is not in accordance with the specifications or testing requirements prescribed in the Solicitation, the Commissioner may reject the Bid. If an award has been made, the Commissioner may cancel the Contract at the expense of the Contractor.
- D. **Testing** - All samples are subject to tests in the manner and place designated by the Commissioner, either prior to or after Contract award. Unless otherwise stated in the Solicitation, Bidder samples consumed or rendered useless by testing will not be returned to the Bidder. Testing costs for samples that fail to meet Contract requirements may be at the expense of the Contractor.
- E. **Requests for Samples by Authorized Users** - Requests for samples by Authorized Users require the consent of the Contractor. Where Contractor refuses to furnish a sample, Authorized User may, in its sole discretion, make a determination on the performance capability of the Product or on the issue in question.

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