



Contract Award Notification

Table with contract details: Title (Group 38604, Traffic Paint...), Award Number (23252), Contract Period (May 18, 2022 through May 17, 2027), Bid Opening Date (February 10, 2022), Date of Issue (May 18, 2022), Specification Reference (As Incorporated In The Solicitation), Contractor Information (Appears starting on Page 2 of this Award).

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

Description

This award contains:
• Ready-mixed, fast drying, white and organic yellow waterborne traffic paint for use on bituminous and Portland cement concrete pavements.
• Type I reflectorizing glass spheres with moisture resistant coating for application on waterborne traffic paint to produce a reflective painted roadway stripe to provide visual traffic delineation, both day and night, for the motoring public.
• Drying agent compound to be used as an additive in conjunction with waterborne traffic paint and glass spheres to provide a drying agent which accelerates the no-tack time of the waterborne traffic paint to reduce wet paint tracking into driving lanes.
Traffic markings (stripes) are regarded as one of the most cost-effective methods of controlling traffic flow; these products increase driver awareness and help ensure the safety of the driving public.
Use of the Quick Quote to obtain pricing is MANDATORY on this contract.
This Award has 0% MBE, 0% WBE and 0% SDVOB participation goal requirements.

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**SECTION 1: CONTRACTOR INFORMATION**

**1.1 Contractor Information**

**NOTE:** See individual contract items to determine actual awardees.

Contact information for placing NYS Contract Orders and additional contractor info is provided in included within the PRICING document for this award found at the OGS website here:

<https://online.ogs.ny.gov/purchase/spg/awards/3860423252CAN.HTM>

Contract #	Contractor Name & Address	Contract Admin Information	Fed. ID #/ NYS Vendor ID #
PC69550	Ennis-Flint Inc 4161 Piedmont Pkwy Suite 370 Greensboro, NC 27410	Toll Free #: 800-331-8118 Phone #: 336-308-3794 Contact: Kelli AH-Keen Email: <a href="mailto:KAH-Keen@ppg.com">KAH-Keen@ppg.com</a>	75-2657523 1000009671

Contract #	Contractor Name & Address	Contract Admin Information	Fed. ID #/ NYS Vendor ID #
PC69551	Ozark Materials LLC 591 Glendale Ave Greenville, AL 36033	Phone #: 334-368-1655 Contact: Noel Seale Email: <a href="mailto:bids@ozarkmaterials.net">bids@ozarkmaterials.net</a>	45-4117820 1100182975

Contract #	Contractor Name & Address	Contract Admin Information	Fed. ID #/ NYS Vendor ID #
PC69552	Potters Industries LLC 3222 Phoenixville Pike Suite 103 Malvern, PA 19355	Toll Free #: 800-552-3237 Phone #: <b>445-895-3236</b> Contact: <b>Becky Tarkenton</b> Email: <a href="mailto:Becky.Tarkenton@pottersindustries.com">Becky.Tarkenton@pottersindustries.com</a>	22-1933307 1000016855

Contract #	Contractor Name & Address	Contract Admin Information	Fed. ID #/ NYS Vendor ID #
PC69554	The Sherwin-Williams Company 101 W Prospect Ave Cleveland, OH 44115	Phone #: 800-597-2929 Contact: Inside Sales Email: <a href="mailto:hwyinsidesales@sherwin.com">hwyinsidesales@sherwin.com</a>	34-0526850 1000031328

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

AGENCIES SHOULD NOTIFY NEW YORK STATE OGS 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 AUTHORIZED USER SHOULD ALSO BE REPORTED TO OGS PROCUREMENT SERVICES.

**1.2 Small, Minority and Women-Owned Businesses:**

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

**1.3 Recycled, Remanufactured and Energy Efficient Products:**

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

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

**1.4 Note to Authorized Users:**

When placing purchase orders under the contract(s), the authorized user should be familiar with and follow the terms and conditions governing its use which usually appears at the end of this document. The authorized user is accountable and responsible for compliance with the requirements of public procurement processes. The authorized user must periodically sample the results of its procurements to determine its compliance. In sampling its procurements, an authorized user should test for reasonableness of results to ensure that such results can withstand public scrutiny.

The authorized user, when purchasing from OGS contracts, should hold the contractor accountable for contract compliance and meeting the contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, authorized users are encouraged to seek improved pricing whenever possible.

Authorized users have the responsibility to document purchases, particularly when using OGS multiple award contracts for the same or similar product(s)/service(s), which should include:

- a statement of need and associated requirements,
- a summary of the contract alternatives considered for the purchase,
- the reason(s) supporting the resulting purchase (e.g., show the basis for the selection among multiple contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).

## **1.5 Overview & Scope**

This Solicitation is issued by the New York State (“NYS”) Office of General Services (“OGS”), Procurement Services for Traffic Paint (Waterborne—Lead-Free) & Glass Spheres for ReflectORIZED Pavement Marking (Various Types) as specified herein for all Authorized Users eligible to purchase through this Solicitation.

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.

The solicitation contains:

- Ready-mixed, fast drying, white and organic yellow waterborne traffic paint for use on bituminous and Portland cement concrete pavements. Waterborne traffic paint supplied under this specification shall be designed for heated application by mobile long line striping equipment.
- Type I reflectorizing glass spheres with moisture resistant coating for application on waterborne traffic paint to produce a reflective painted roadway stripe to provide visual traffic delineation, both day and night, for the motoring public.
- Drying agent compound to be used as an additive in conjunction with waterborne traffic paint and glass spheres to provide a drying agent which accelerates the no-tack time of the waterborne traffic paint to reduce wet paint tracking into driving lanes.

## **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 \$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 Products and pricing that best meet their needs in the most practical and economical manner. See Appendix B, Estimated/Specific Quantity Contracts and Participation in Centralized Contracts.

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

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

- Contract pricing that is lower than anticipated could result in a higher quantity of purchases by Authorized Users than anticipated.
- Contract pricing that is higher than anticipated could result in a lower quantity of purchases by Authorized Users than anticipated.

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

## 1.7 Definitions

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

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

**“Business Day”** 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 Jr. Day; Washington’s Birthday (observed); Memorial Day; Juneteenth; Independence Day; Labor Day; Columbus Day; Veterans Day; Thanksgiving Day; and Christmas Day.

**“NYS Vendor ID”** shall 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 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”).

“**Resellers**” shall refer to any model for distribution of Product other than direct from the Contractor. Resellers include but are not limited to approved value-added resellers (“VARs”), distributors, dealers, sales agents, and alternate channel partners.

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

### 1.8 Periodic Recruitment

This Solicitation allows for periodic recruitment of additional Contractors during the term of the Contract. Recruitment periods are optional at the discretion of the State. Additional recruitment periods will be advertised in the NYSCR. Bidder must register with the New York State Contract Reporter at <https://www.nyscr.ny.gov> in order to receive notifications regarding any periodic recruitments under this Solicitation. Bids shall be evaluated under substantially the same terms and conditions as the original Bids. Bidders shall also be required to submit necessary documentation for any additional applicable statutory requirements in effect at the time of the new Solicitation.

Once awarded a Contract, a Contractor may not resubmit a Bid for future consideration for LOTS 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.

### 1.9 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.

**The use of the Quick Quote Worksheet is MANDATORY for all purchases made by any Authorized User through the Contract(s) on this award.**

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.

## **SECTION 2: SPECIFICATIONS**

It is the Contractor's responsibility to provide product that conforms with the specifications as listed in the Invitation for Bids for the entire term of the awarded contract. No changes or substitution of products or pricing is permitted without the express approval of OGS Procurement Services.

References made in this Solicitation are to NYSDOT Materials Bureau Approved Lists most current version as published at the time of this Invitation for Bids.

See Attachment – Specifications, of this Solicitation for detailed information.

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## SECTION 3: TERMS AND CONDITIONS

### 3.1 Contract Terms and Extension

- A. Base Term: Notwithstanding the provisions of Appendix B Section 22, Contract Creation/Execution, the base contract term shall begin on the later of (i) May 18, 2022, or (ii) the date of OSC approval of the final, executed contract documents and consistent with the MOU, and shall continue through and including May 17, 2027.
- B. Extensions. At the State's option, and subject to the approval of OSC and consistent with the MOU, the Contract may be extended for three (3) years, in increments as deemed to be in the best interest of the State. Whether the optional extensions are exercised is at the sole discretion of the State. A Contractor shall retain the right to decline a Contract extension offered under this section. Any Contract extension will be under the same terms and conditions, subject to any additional applicable statutory and policy requirements. Any extensions provided under this section shall apply in addition to any rights set forth in Appendix B, Contract Term – Extension.
- C. The Contract term provided for in this section shall extend six months beyond its termination date only for Authorized Users whose contracts must be registered with the Office of the New York City Comptroller. During the six-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).

### 3.2 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.

### 3.3 Price

Price shall include all customs duties and charges and be net, FOB 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.**

Contractors are encouraged to offer their best possible pricing; additionally, Authorized Users are required to use the Quick Quote process to obtain the best possible pricing. Contract prices are not-to-exceed for all LOTS and shall be firm except in the case of lowered pricing submitted using the Quick Quote process in accordance with Section - Quick Quotes, or price updates permitted in accordance with Section - Price Updates, of this Solicitation.

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.

### **3.3.2 Traffic Paint (Waterborne—Lead-Free): Return of 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 Attachment 9 – *Specifications*, Section - *Packaging* for additional information.

## **3.4 Quick Quote**

Authorized Users must select the appropriate Contractor to provide their particular product 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 Worksheet will be MANDATORY for all purchases made by any Authorized User through the Contract(s) resulting from this Invitation for Bids.**

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 their awarded "not-to-exceed" prices when they receive a Quick Quote. Prices quoted remain firm regardless of what the price adjustment is at the time of delivery.

The Quick Quote form will be published to the OGS website (on the contract award landing page) at the time of award.

**3.5 Price Updates**

Prices set forth in this Contract are firm through August 31<sup>st</sup>, 2022. Beginning September 1<sup>st</sup>, 2022 and every six months thereafter, the prices are subject to an increase or decrease 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.

A base index shall be established using the month of November 2021. An adjusted index shall then be established by averaging the six-month period ending two months prior to the first price update date. 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). The average adjusted index is then compared with the base index, and the resulting percentage of increase or decrease shall be applied to the contract prices. Price increases and decreases shall not exceed 5% per adjustment period.

<b><u>Effective Date for Adjusted Pricing</u></b>	<b><u>Base Index Period</u></b>	<b><u>Adjustment Index Period</u></b>
Sept 1, 2022	November 2021	Dec 2021 – May 2022
March 1, 2023	Dec 2021 – May 2022	Jun 2022 – Nov 2022
Sept 1, 2023	Jun 2022 – Nov 2022	Dec 2022 – May 2023
March 1, 2024	Dec 2022 – May 2023	Jun 2023 – Nov 2023
Sept 1, 2024	Jun 2023 – Nov 2023	Dec 2023 – May 2024
March 1, 2025	Dec 2023 – May 2024	Jun 2024 – Nov 2024
Sept 1, 2025	Jun 2024 – Nov 2024	Dec 2024 – May 2025
March 1, 2026	Dec 2024 – May 2025	Jun 2025 – Nov 2025
Sept 1, 2026	Jun 2025 – Nov 2025	Dec 2025 – May 2026
March 1, 2027	Dec 2025 – May 2026	Jun 2026 – Nov 2026

In the event a contract extension is implemented, subsequent price adjustments will follow the format indicated above. OGS will provide an updated table as needed.

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

**3.5.1 LOT I & LOT II – 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 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, PPI Industry Data for General Freight Trucking. Series ID#: PCU484122484122p.

**3.5.2 LOT III & LOT IV – Glass Spheres for Reflectorized Pavement Marking (Various Types):**

<u>Index Name</u>	<u>Series ID#</u>
<b>Industry:</b> Glass product manufacturing made of purchased glass <b>Product:</b> primary products	PCU327215327215p
<b>Group:</b> Fuels and related products and power (Not Seasonally Adjusted) <b>Item:</b> Natural gas	WPU0531
<b>Group:</b> Chemicals and allied products (Not Seasonally Adjusted) <b>Item:</b> Other inorganic chemicals, nec	WPU06130283
<b>Industry:</b> General freight trucking, long-distance LTL (Not Seasonally Adjusted) <b>Product:</b> Primary services	PCU484122484122p

**55% of the price update** of awarded contract prices will be adjusted according to activity reported by the US Department of Labor, PPI Industry Data for Glass product mfg. made of purchased glass. Series ID#: PCU327215327215P

**20% of the price update** of awarded contract prices will be adjusted according to activity reported by the US Department of Labor, PPI Commodity Data for Fuels and related products and power-Natural Gas. Series ID#: WPU0531, not seasonally adjusted.

**15% of the price update** of awarded contract prices will be adjusted according to activity reported by the US Department of Labor, PPI for the group chemicals and allied products, other inorganic chemicals. Series ID#: WPU06130283, 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, PPI Industry Data for General Freight Trucking. Series ID#: PCU484122484122p

Should any referenced 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.

### **3.6 Product Addition and Removal – Traffic Paint (Waterborne – Lead-Free)**

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

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

Contractors shall submit their updated traffic paint product information to the OGS Procurement Services 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 traffic paint product(s) upon approval by OGS. Any request for 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 traffic paint product information. No 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 traffic paint product at any time.

### **3.7 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.

### 3.8 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.

### 3.9 Volume Discounts

Bidders may offer additional volume discounts. Volume discounts may be applied per purchase order, cumulatively per customer agency, 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 agency volume discount shall be additional discounts applied to all future orders made by an individual agency 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 state and non-state orders once an established volume has been met under this contract.

### 3.10 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).

#### 3.10.1 Traffic Paint (Waterborne—Lead-Free)

Authorized Users should indicate the following information:

- Purchase orders where deferred shipments are requested by the Authorized User 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.

- For non-NYSDOT deferred orders, where the requested shipping dates are in excess of 90 days, a notation of pre-approval by the contractor shall be clearly noted, including date, time, and name of authorizing party. If approval was made in writing, a copy of the memo should be attached.

### **3.10.2 Glass Spheres for Reflectorized Pavement Marking**

Authorized Users should indicate the following information:

- Type and gradation required
- Palletization requirements
- Special Marking requirements
- Instructions and address for submission of SDS

### **3.11 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.

### **3.12 Minimum Order**

#### **3.12.1 Traffic Paint (Waterborne—Lead Free)**

The minimum order for LOTS I & II 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 and with the agreement of the Authorized User, 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 FOB 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.

#### **3.12.2 Glass Spheres for Reflectorized Pavement Marking**

The minimum order for LOTS III & IV is 10,000 lbs net weight and the weight may be assorted among sphere types within the confines of the spheres overall classification.

Orders must be made in net weight as determined to be a multiple of stated package weight. Items designated as available in bags are to be ordered in multiples of 50 pounds. Items designated as available in box containers are to be ordered in multiples of 2,000 pounds.

Contractors may elect to honor orders for less than the minimum order.

### 3.13 Minimum Production Batch Size

#### 3.13.1 Traffic Paint (Waterborne—Lead Free)

Minimum production batch size shall be 2,000 gallons for each color of paint. A batch is further defined as appropriate in the quality assurance section located in Attachment – *Specifications*, Section - *Quality Assurance Requirements*.

### 3.14 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/nys-vendors>.

### 3.15 Product Delivery

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

#### 3.15.1 Traffic Paint (Waterborne—Lead Free)

##### 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 may be considered by an agency 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 NYS Department of Transportation 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 affected agency to request OGS review to assess the potential for the application of Liquidated Damages. 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, Contractor is required to notify the agency 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 Contractor's responsibility for shipment of product as soon as possible, nor the conditions noted under Invitation for Bids, Section - *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 buyer 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 buyer 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 trucks 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 two-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.

#### **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, 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 Contractor's expense and also imposing the Liquidated Damages clause as found herein.

#### **Delivery Certification**

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

### **3.15.2 Glass Spheres for Reflectorized Pavement Marking**

#### **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. Product will be required as soon as possible and delivery may be considered by an agency issuing a purchase order.

#### **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, Contractor is required to notify the agency 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. 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 agency's contact person.

**Delivery Conditions**

Contractor shall be responsible to make no shipment of the product that will be exposed to conditions during transit, detrimental to the product. Product must be delivered strictly in accordance with specifications and shall be "Ready for Use."

**Delivery Certification**

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

**Certificate of Analysis**

Contractor is required to submit with each delivery a 'Notarized' and 'Certified' Certificate of Analysis, which will indicate the refractive index, percent roundness and sieve gradation of the delivered materials.

**Shipping, Packing, Marking, and Palletization**

Shipping shall be only by covered trailers in order to maintain sphere dryness. The glass spheres shall be packed either in bags containing 50 lbs. net or cardboard boxes containing 2,000 lbs. net. Contractor shall be responsible for the proper delivery of the glass spheres, in specified containers. The containers shall not affect its contents. Bags or boxes of glass spheres shall not contain foreign contaminants.

If bags are used, they shall be either a standard cemented center seam, plastic lined, burlap bag, or plastic lined paper bags. A bag shall contain 50 lbs. net weight. If required by ordering agency, the bags shall be packed and delivered on disposable pallets, forty (40) bags to a pallet (2,000 lbs.).

If cardboard boxes are used, they should be moisture resistant, multi-wall, five (5) wall box constructed new cardboard containers consisting of a box and a poly-liner to exclude moisture. **Boxes must have sufficient integrity to be stackable with visible indication of maximum stacking quantity.** Reusable boxes are unacceptable. Cardboard boxes shall be delivered on a skid or pallet. All pallets shall be constructed to allow use of forklifts.

The bags and boxes shall be marked with the name and address of the manufacturer and name and net weight of the material, the glass sphere coating type, the lot and/or batch number, and the date of manufacture (mm / yy).

The ordering agency shall have sufficient justification to reject bags or boxes of glass spheres that are: covered with water, supplied in improper containers, contaminated with foreign materials, or supplied on broken skids or pallets. Rejected glass spheres shall be replaced within seven (7) calendar days of the date of rejection notice.

**LOT IV: Glass Spheres with Drying Agent**

The packages shall be marked with the name and address of the manufacturer and name and net weight of the material, the material name, the lot and/or batch number, and the date of manufacture (mm /yy) and be secured on disposable pallets, 40 bags to a pallet (2,000 lbs.). The pallets shall be constructed to allow use of forklifts.

Shipping shall be only by covered trailers in order to maintain product dryness.

The compound shall be packed in bags and Contractor shall be responsible for the proper delivery thereof. The containers shall not affect its contents, nor contain foreign contaminants. Bags shall be either standard cemented center seam, plastic-lined burlap bags, or plastic-lined paper bags. A bag shall contain 50 lbs. net weight.

The ordering agency shall have sufficient justification to reject bags of compound that are covered with water, supplied in improper containers, contaminated with foreign materials, or supplied on broken skids or pallets. Rejected items shall be replaced within seven (7) calendar days of the date of rejection notice.

**3.16 Liquidated Damages**

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

Two-hundred fifty dollars (\$250.00) per business day, not as a penalty but as liquidated damages, for each color of paint, 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 NYS 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.

The actual delivery date of each color 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 Contractor for each color of paint on each invoice for purchase orders that are delivered late.

### **3.16.1 Additional Notes for Traffic Paint (Waterborne –Lead-Free)**

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 Contractor to deliver the required sample requirements in a timely manner, or of the product to meet the stated specifications and requirements, Contractor may be held liable for Liquidated Damages as stated here in.

### **3.17 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.

### **3.18 Unanticipated Excessive Purchase**

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

### **3.19 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. Contractor must notify OGS within five Business Days if its 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.

### 3.20 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 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/>.

### 3.21 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.

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

**3.22 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 Attachment 4 – *Insurance Requirements*.

**3.23 Report of Contract Usage**

Contractor shall submit Attachment – *Report of Contract Usage* including total sales to Authorized Users of this Contract by Contractor, and all authorized resellers, dealers and distributors, if any, in accordance with the schedule listed in the table below.

<u>Report</u>	<u>From</u>	<u>To</u>	<u>Report Due Date</u>
1	Contract Start	9/30/2022	10/15/2022
2	10/1/2022	3/31/2023	4/15/2023
3	4/1/2023	9/30/2023	10/15/2023
4	10/1/2023	3/31/2024	4/15/2024
5	4/1/2024	9/30/2024	10/15/2024
6	10/1/2024	3/31/2025	4/1/2025
7	4/1/2025	9/30/2025	10/15/2025
8	10/1/2025	Contract End	7/1/2026

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

The report is to be submitted electronically via e-mail in Microsoft Excel to OGS Procurement Services, to the attention of the individual listed on the front page of the Contract Award Notification and shall reference the Contract Group Number, Award Number, Contract Number, Sales Period, and Contractor's name.

The report in Attachment – *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.

**3.24 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.

**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.

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>

### **3.25 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 SDVOBs 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/>

### **3.26 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*.

**3.27 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.

**3.28 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.

**3.29 Diesel Emission Reduction Act**

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

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

**3.30 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.

### 3.31 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.

### 3.32 NYS Vendor Responsibility

OGS conducts a review of prospective Contractors 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://www.osc.state.ny.us/state-vendors/vendrep/vendrep-system>.

Vendors must provide their NYS Vendor ID Number when enrolling. For information on how to request assignment of an NYS 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 <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.

### **3.33 "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 NYSCR, 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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### 3.34 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.

### 3.35 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.

### 3.36 Resellers

#### A. Definitions

Reseller is a company or individual (merchant) that purchases goods or services with the intention of selling them rather than consuming or using them. Also known as Value Added Reseller (VAR) or channel partner. Resellers must be eligible to quote statewide, independently and lower than manufacturer (Contract) pricing for procurements under resulting Contracts. Reseller must also be able to accept orders, invoice and receive payment for Products.

NOTE: This clause is not applicable to manufacturer's authorized resellers that submit a bid and are awarded as a prime contract holder on this contract.

#### B. Conditions of Reseller Participation

Resellers must be approved in advance by the State as a condition of eligibility under the Contract. The State also reserves the right to rescind any such participation or request that Contractor name additional Resellers, in the best interests of the State, at the State's sole discretion, at any time. Contractor shall have the right to qualify Resellers and their participation under this Contract by product line, contracting program (e.g., government/educational sales), geographic region, size/sales volume, technical training or other criteria ("qualifying criteria"), provided that:

1. such qualifying criteria are uniformly applied to all potential Resellers based upon Contractor's established, neutrally applied commercial/governmental program criteria, and not to a particular procurement;
2. all general categories of qualifying criteria must be disclosed by the Contractor to the State, in advance, at the beginning of the Contract term;
3. those qualifying criteria met by the Reseller must be identified in Reseller designations submitted by email to the OGS Procurement Services Contract Manager at the time that Reseller approval is requested; and,
4. Immediate advance notice is provided to OGS in the event that a change in Reseller's status occurs during the Contract term.

All Resellers who have been approved in accordance with the foregoing paragraph shall be eligible to quote lower pricing for procurements under this Contract which meet their qualifying criteria. Contractor warrants and represents that it shall not, directly or indirectly, by agreement, communication or any other means, restrict any Reseller's participation or ability to quote a particular order.

C. Designation of Resellers

When Resellers are submitted for approval, Contractor must provide the State, in advance, with all necessary ordering information, billing addresses and Federal Identification numbers in the format requested by email. Contractor shall also specify whether orders must be placed directly with Contractor, or may be placed directly with designated Resellers.

D. Responsibility for Reporting/Performance

Contractor shall be fully liable for a Reseller's performance and compliance with all Contract terms and conditions. Product purchased through a Reseller must be reported by Contractor in the required sales reports to the State as a condition of payment. In addition to inclusion of Reseller volume in the Contractor's sales reporting obligation to the State, at the request of an Authorized User, the Reseller shall provide the Authorized User with reports of the individual Authorized User's Contract activity with the Reseller.

E. Applicability of Contract Terms

Product ordered directly through Resellers shall be limited to Products previously approved for inclusion under this Contract and shall be subject to all terms and conditions of this Contract as a condition of Reseller participation.

**3.37 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.

**3.38 Drug and Alcohol Use Prohibited**

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

**3.39 Traffic Infractions**

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

**State of New York  
 Office of General Services  
 PROCUREMENT SERVICES  
 Contract Performance Report**

Please take a moment to let us know how this contract award has measured up to your expectations. If reporting on more than one contractor or product, please make copies as needed. This office will use the information to improve our contract award, where appropriate. **Comments should include those of the product's end user.**

**Contract No.:** \_\_\_\_\_ **Contractor.** \_\_\_\_\_

**Describe Product\* Provided (Include Item No., if available):** \_\_\_\_\_

**\*Note:** "Product" is defined as a deliverable under any Bid or Contract, which may include commodities (including printing), services and/or technology. The term "Product" includes Licensed Software.

	Excellent	Good	Acceptable	Unacceptable
• Product meets your needs				
• Product meets contract specifications				
• Pricing				

**CONTRACTOR**

	Excellent	Good	Acceptable	Unacceptable
• Timeliness of delivery				
• Completeness of order (fill rate)				
• Responsiveness to inquiries				
• Employee courtesy				
• Problem resolution				

Comments: \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_(over)

Agency: \_\_\_\_\_ Prepared by: \_\_\_\_\_

Address: \_\_\_\_\_ Title: \_\_\_\_\_

\_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_ Phone: \_\_\_\_\_

\_\_\_\_\_ E-mail: \_\_\_\_\_

**Please detach or photocopy this form & return via email to [Brandy.Alden@ogs.ny.gov](mailto:Brandy.Alden@ogs.ny.gov) or mail to:**

OGS PROCUREMENT SERVICES  
 Customer Services, 38th Floor  
 Attn: Brandy Alden  
 Corning 2<sup>nd</sup> Tower - Empire State Plaza  
 Albany, New York 12242  
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