



**Office of General Services
Procurement Services**

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Contract Award Notification

Title	: Group 01800 – ROAD SALT, TREATED SALT, & EMERGENCY STANDBY ROAD SALT (STATEWIDE)
	Classification Code(s): 12
Award Number	: <u>23175</u> (Replaces Award 22843) (Runs Concurrent with Awards 23134, 23212 & 23248)
Contract Period	: September 1, 2019 through August 31, 2022
Bid Opening Date	: August 8, 2019
Date of Issue	: August 30, 2019 (Revised September 1, 2021)
Specification Reference	: As Incorporated in the Invitation for Bids
Contractor Information	: Appears on Page 4 of this Award

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

Description

Road Salt is used for snow and ice control. Treated Salt is granular sodium chloride (Rock Salt) treated with corrosion inhibited liquid magnesium chloride – Types 1 and 2. These are filed requirement contracts which require the Contract User to purchase 70% of their filed requirement or 50% of their filed requirement if an awarded county is for Solar Salt. Automatic price increases become effective once deliveries exceed 120% of the Contract User's filed requirement.

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SECTION 1: INTRODUCTION

1.1 Contractor Information

This Contract Award Notification is published as an informational aid for NYS OGS Procurement Services Authorized Users to assist them in the use of Award 23175. Contractors are reminded to refer to their specific Contract for guidance or contact the contract management specialist of record for assistance.

NOTE: See individual contract items to determine actual awardees.

See separate document PRICING for Contact Information to place NYS Contract Orders.

Contract #	Contractor & Address	Contract Admin	Fed ID#/ NYS Vendor ID#
PC68889	American Rock Salt Co LLC PO Box 190 Mt. Morris, NY 14510	Toll Free #: 888-762-7258 Phone #: 585-991-6817 Contact: Jamie A. McClain Title Marketing Manager E-mail: Jamie.McClain@AmericanRockSalt.com	16-1516458 1000008297
<i>Contractor <u>does not</u> accept NYS Procurement Card</i>			

Contract #	Contractor & Address	Contract Admin	Fed ID#/ NYS Vendor ID#
PC68890 SB	Apalachee LLC 1423 Highland Ave Rochester, NY 14620	Phone #: 585-442-4131 Cell #: 585-303-5270 Contact: Ellen Pouthier Title VP Sales & Office Manager E-mail: Sales@ApalacheeSalt.com	47-2089879 1100213604
<i>Contractor <u>does not</u> accept NYS Procurement Card</i>			

Contract #	Contractor & Address	Contract Admin	Fed ID#/ NYS Vendor ID#
PC68891	Atlantic Salt Inc 134 Middle Street, Suite 210 Lowell, MA 01852	Phone #: 978-453-4911 Contact: Donna Capillo Title Assistant Corporate Secretary E-mail: DCapillo@EasternMinerals.com	13-2914699 1000026327
<i>Contractor <u>does not</u> accept NYS Procurement Card</i>			

Contract #	Contractor & Address	Contract Admin	Fed ID#/ NYS Vendor ID#
PC68892	Cargill, Inc d/b/a Cargill, Inc - Salt, Road Safety 24950 Country Club Blvd, Suite 450 North Olmsted, OH 44070	Toll Free #: 800-600-7258 Contact: Brittany Schwarz Title Customer Care Representative E-mail: Salt_CustomerCareRoadSafety@Cargill.com	41-0177680 1000048669
<i>Contractor <u>accepts</u> NYS Procurement Card for orders up to \$50,000.</i>			

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.

1.2 Overview

This Contract Award Notification is issued by the New York State (“NYS”) Office of General Services (“OGS”), Procurement Services for Road Salt, Treated Salt, and Emergency Standby Road Salt as specified herein for all Authorized Users eligible to purchase through this Contract.

This Contract Award Notification outlines the terms and conditions, and all applicable information related to Contractor and Authorized User participation. All parties involved are strongly urged to become familiar with their rights and responsibilities, as outlined in this document.

1.3 Scope

The contract(s) are to provide Road Salt (Rock) in bulk, Treated Salt (Types 1 & 2) in bulk, and Emergency Standby Road Salt (Rock & Solar) in bulk, to various locations throughout the State. State and eligible non-state agencies may participate.

Lot I	Road Salt (Rock)
Lot II	Treated Salt – Type 1
Lot III	Treated Salt – Type 2
Lot IV	Emergency Standby Road Salt (Rock &

An “X” in the chart below denotes that the Lot/County was bid under Invitation for Bids (IFB) 23175. Other counties were renewed under existing contracts (Award 23134 and 23212) or bid under IFB 23248.

NOTE: All existing Lot IV awards (Emergency Standby Road Salt) for all counties were rebid under IFB 23248.

County	Road Salt (Lot I)	Treated Salt Type 1	Treated Salt Type 2
Albany	X	X	
Allegany	X		
Cattaraugus	X		X
Chautauqua	X	X	
Clinton	X		X
Erie	X	X	X
Franklin	X		
Genesee	X		X
Jefferson	X	X	
Livingston	X	X	
Monroe	X	X	X
Niagara	X		X
Oneida			X
Ontario	X	X	X
Orleans	X		X
Oswego	X		
Queens		X	
Rensselaer	X	X	
St. Lawrence	X		X

Schenectady	X	X	
County	Road Salt (Lot I)	Treated Salt Type 1	Treated Salt Type 2
Warren	X		
Washington	X		
Wayne	X		X
Wyoming	X		

1.4 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.

1.5 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

1.6 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).

1.7 Estimated Quantities

The quantities listed for Road Salt and Treated Salt are based on the requirements filed for each using entity (please refer to Attachment 1 – *Pricing* for estimated quantities). Emergency Standby Road Salt has no filed requirements and there is no guarantee of usage against resultant contract. See Section 3.8 - *Minimum/Maximum Obligations* for percentage obligations for Authorized Users and Contractors. The Contractor must furnish all quantities actually ordered at or below the Contract prices. The anticipated dollar value of the award for this Contract, based on historical purchases under previous awards, is approximately \$98,000,000 annually. The individual value of each resultant Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered. See Appendix B, *Estimated/Specific Quantity Contracts and Participation in Centralized Contracts*.

SECTION 2: 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. Contractor must notify OGS within five Business Days if it's Contract Administrator, Emergency Contact, or Customer Service employees change, and provide an interim contact person until the position is filled. Changes shall be submitted electronically via e-mail to the OGS Contract Management Specialist.

SECTION 3: TERMS & CONDITIONS

3.1 Appendix A

Appendix A, Standard Clauses for New York State Contracts, dated January 2014 and included in the original Contract is hereby replaced in its entirety with the Appendix A dated October 2019, which is attached hereto and is expressly made a part of this Contract Extension Agreement as fully as if set for that length herein.

3.2 Appendix B

Appendix B, *Office of General Services General Specifications*, dated April 2016, is hereby expressly made a part of this Contract Award Notification as fully as if set forth at length herein and shall govern any situations not covered by this document or Appendix A.

3.3 Specifications

For general and detailed specification of Road Salt (Rock & Solar) and Treated Salt (Type 1 & Type 2), and Lot structure, see Attachment 9 – *Road & Treated Salt Specifications* on the landing page for this Award.

3.4 Contract Term and Extensions

- A. Base Term. The Contract shall be in effect for a term of one (1) year, from September 1, 2019 to August 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*).
- B. Extensions: If mutually agreed between OGS and the Contractor, the Contract may be extended under the same terms and conditions for up to three (3) additional one (1) year extensions. The Contract extension may be exercised on a month to month basis such as an additional three-month, six-month, twelve-month, or twenty-four-month period.

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).

3.5 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.

3.6 Price

Price shall include all customs and duties and be net per ton, FOB destination designated on purchase order, including unloading of the bulk salt. Contract prices shall be firm except for price revisions permitted in accordance with the following clauses:

- Price Escalation Based on Exceeding 120% & 130% of Filed Requirement
- Price Escalation Based on Exceeding 150% of Filed Requirements
- Fuel Price Adjustment
- Price Adjustment for Renewals

Furthermore, the stated prices may be adjusted periodically based on various provisions.

3.6.1 Price Escalation Based on Exceeding 120% & 130% of Filed Requirement

A price escalation will be permitted when delivery quantities exceed 120%, and again at 130%, of filed requirement.

Contractors shall notify Authorized Users of the price escalation amount applicable at the time an order is placed (if an escalation in price for future purchases is to be applied).

A unit price increase of 10% will be allowed once quantities delivered are over 120% of an Authorized User's filed requirement. Once deliveries exceed 130% of an Authorized User's filed requirement the price increase will change to 15%.

Authorized Users are allowed to solicit prices from other Contractors who are a part of the award once notified that a price escalation is applicable. If a lower price is secured, the Contractor for the specific location must be given an opportunity to match or better the offered price. If the Contractor will not or cannot match or better the offered price, Authorized Users may obtain their needs from the State awarded Contractor offering the lower price.

Authorized Users with multiple delivery sites (e.g. NYSDOT, NYS Thruway and County Highways) shall have their minimum/maximum delivery quantities determined based on the sum of all their sites serviced by awarded Contractor.

Contractors will continue to deliver to all Authorized Users including up to 150%. Failure to deliver may result in a "Buy Against" or a delivery deduction to the Contractor.

3.6.2 Price Escalation Based on Exceeding 150% of Filed Requirement

Contract purchases over 150% of filed requirements can be made upon mutual agreement of the authorized user and the Contractor with a price escalation not to exceed 35% of the Contract price. Purchases over 150% of the filed requirements at pricing exceeding the 35% escalation will be considered non-contract purchases. No buy-against nor liquidated damages will be imposed for failure to comply with the delivery terms and conditions of this Contract for quantities over 150% of the filed requirements.

3.6.3 Fuel Price Adjustment

A fuel price adjustment may be made to Contract pricing in accordance with the following procedure:

- Fuel Price adjustments will be made for deliveries of road salt during the Contract period. Deliveries made after August 31 to meet minimum filed requirement obligations will use the fuel price adjustment in effect at the time of delivery.
- On a monthly basis an amount may be added or deducted from Contract pricing based on prices posted in the "EIA Retail On-Highway Diesel Prices". The New England PADD 1A shall be the designated posting for the adjustments. (If this source becomes unavailable, unworkable, unsuitable, or not reflective of the market conditions, then another source may be selected by the Commissioner of General Services in his/her sole discretion.)

- The base rate used for calculating adjustments shall be the rate shown in the referenced EIA on the date of the Bid Opening indicated on the page 1 of this Invitation for Bids and adjustments will be permitted monthly. The monthly average will be arrived at by using the Monday prices for a given month as displayed in the EIA Retail On-Highway Diesel Prices and determining an average for that month. The previous month's prices shall be used to determine the monthly average (i.e. – August's prices will be used to determine September's adjustment). All prices will be rounded to two decimal places.
- The fuel price adjustment shall be applied for the date of delivery.
Ex.: If a purchase order for salt is received on January 30, and the salt is delivered on February 2, the fuel price adjustment used will be that for the month of February.
- Fuel Price Adjustment calculations will be posted to the OGS website with the Contract Award Notification upon Contract approval.

EXAMPLE FUEL PRICE ADJUSTMENT INCREASE:

Published rate on date of bid opening	\$4.07
Monthly Average Price	\$4.17

Monthly Average Price – Published rate on date of bid opening = Fuel Price Adjustment

$\$4.17 - \$4.07 = \$0.10 =$ Additional amount allowed to be added to price per ton.

EXAMPLE FUEL PRICE ADJUSTMENT DECREASE:

Published rate on date of bid opening	\$4.07
Monthly Average Price	\$3.97

Monthly Average Price – Published rate on date of bid opening = Fuel Price Adjustment

$\$3.97 - \$4.07 = -\$0.10 =$ Amount allowed to be deducted from price per ton.

3.6.4 Fuel Price Adjustment for quantities exceeding 120% & 130%

The calculation for the fuel price adjustment for quantities ordered over the 120% and 130% thresholds with 10% or greater surcharges shall be as follows:

(Base price per ton * surcharge) + (fuel price adjustment) = adjusted price per ton

EXAMPLE OF FUEL PRICE ADJUSTMENT INCREASE FOR ORDER OVER 120% OF FILED REQUIREMENT:

Base price per ton in contract		\$60 (example only)
Published fuel rate on date of bid opening	\$4.07	
Monthly Average Price of fuel	\$4.17	
Fuel price adjustment ($\$4.17 - \$4.07 = \$0.10$)	\$0.10	
Surcharge of 10%	1.1	

$(\$60 * 1.1) + (\$0.10) = \$66.10$ per ton

3.6.5 Additional Notes on Fuel Price Adjustment

Should postings become unavailable, not reflective of market conditions, or differ from current description and/or format, a posting determined by the Commissioner of General Services in his/her sole discretion to be most reflective of market conditions will be used. Corrections to posted prices will be considered only when caused by a typographical or clerical error on the part of said posting.

The following shall apply to all additional price amounts under any Contract awarded:

- Price adjustments are limited to changes in pre-selected posting as noted above. Increases in Contract costs or prices to compensate for other increases in the cost of doing business, regardless of the cause or nature of such costs of the Contractor, will not be allowed during the Contract period, except as indicated under the fuel price adjustment and price escalation clause herein.

- Should the price structure utilized by the parties become unworkable for the State, detrimental or injurious to the State, or result in prices which are not truly reflective of current market conditions and the price is deemed unreasonable or excessive by the Commissioner of General Services, and no adjustment in price is mutually agreeable, the Commissioner of General Services reserves the sole right upon 10 days written notice mailed to the Contractor to terminate any Contract resulting from this bid opening. If the Contractor is unable or unwilling to meet contractual requirements in whole or in part, it shall immediately notify the State of that fact in order that the State may take appropriate action. Such notification shall be in writing and shall be directed to the OGS Procurement Services. Such notification shall not relieve the Contractor of its responsibilities under the Contract.

In the event of an extension, the base rate for calculating adjustments will be the rate shown in the referenced EIA on the date of the next bid year's bid opening and for subsequent years additional extensions would follow this format. If there is no bid opening date for the next year, the base rate for calculating adjustments will be the rate shown in the referenced EIA one year after the last bid opening date. If the date is not a business date when the posting occurs, the next business day will be the date used for the adjustment.

3.6.6 Price Adjustment for Renewals

Price Adjustments for extensions or renewals shall be negotiated and mutually agreed upon by OGS and each Contractor. OGS's review may include appropriate indices as determined by OGS, market conditions reflecting supply and demand, and other economic factors deemed appropriate by OGS. Each Contractor's review will be independent.

3.6.7 Price Reductions

Contractors shall be permitted to reduce their pricing any time during the contract term.

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 Minimum/Maximum Obligations

Authorized Users are obligated to take 70% minimum (50% minimum for solar salt) of their filed requirements during the contract period and Contractors are obligated to deliver up to 150% of the filed requirement for Road Salt and Treated Salt. However, Authorized Users with multiple delivery sites (e.g., NYSDOT, County Highways and NYS Thruway) shall have their minimum/maximum delivery quantities determined based on the sum of all their sites serviced by a Contractor per lot.

When the Authorized User is not able to take the minimum required amount, the salt Contractor will store salt for the Authorized User until December 31 of that calendar year (i.e., user did not take minimum by 8/31/21 – Contractor will store through 12/31/21) at a per ton rate. If storage is necessary for an Authorized User beyond 12/31/21, the salt Contractor may offer storage at a per ton per month rate. Delivery of stored salt between 9/1/22 and 5/31/23 shall meet the delivery requirements in Section 3.9 - *Delivery Terms*.

3.8.1 Contractor Storage Fees

Contractor Name	Price/Ton to Store from 9/1/2022 to 12/31/2022	Price/Ton/Month to Store as of 1/1/2023
American Rock Salt Co LLC	\$3.60/ton	\$3.60/ton/month
Apalachee LLC	\$3.00/ton	\$1.00/ton/month
Atlantic Salt Inc	\$3.50/ton	\$3.50/ton/month
Cargill Inc d/b/a Cargill Inc -Salt, Road Safety	\$3.60/ton	\$11.00/ton/month

3.9 Delivery Terms

Road salt and treated salt shall be shipped bulk delivery as outlined below.

3.9.1 Delivery Schedule

The *Delivery Schedule* for this Solicitation is included as Attachment 12. It is provided as a guide to indicate proposed delivery points and estimated annual requirements. Contractors shall be obligated to add to the delivery schedule any State Agency that submits filed requirement(s) on or before December 31 of the Contract term. Any State Agency that submits filed requirement(s) after December 31 shall be eligible to be added to the delivery schedule and receive deliveries at the Contractor's discretion only.

Any political subdivision or other non-state entity which has not filed a requirement with OGS Procurement Services as of the date of the bid opening shall be eligible to be added to the delivery schedule and receive deliveries at the Contractor's discretion only.

Contractors will be advised regarding political subdivisions or other non-State entities which have filed on a timely basis but do not appear on the delivery schedule.

3.9.2 Compliance with Delivery Schedule & Purchase Orders

Delivery shall be made in accordance with instructions on the Purchase Order from each Authorized User and delivery instructions/conditions as shown in the referenced *Delivery Schedule*. Contractors should carefully review the delivery schedule and make note of these requirements. If there is a discrepancy between the purchase order and what is listed in the Contract and/or within the delivery schedule, it is the Contractor's obligation to seek clarification from the ordering Authorized User and, if applicable, from OGS Procurement Services.

If no representative of the Authorized User is available at the time of delivery, the Contractor shall make a reasonable effort to notify the Authorized User of the delivery, either by phone or by email.

3.9.3 Ordering timeliness

Orders must be placed before 2 p.m. Any orders placed after 2 p.m. shall be deemed as being placed the next business day.

3.9.4 Holidays/Weekends

If the scheduled delivery is to occur on a holiday or weekend, the next weekday will be the delivery date, unless the Contractor and the ordering agency mutually agree differently.

3.9.5 Prevention of Contamination

Delivery trucks shall be inspected (and cleaned if necessary) prior to loading to prevent contamination of salt loads by residual materials found in the truck bodies. Any loads found to be contaminated may be subject to rejection with all related cleanup and/or replacement costs to be borne by the supplier.

All shipments of salt shall be totally covered with a waterproof, non-porous tarpaulin, or similar sheeting material. Torn, ripped or mesh coverings may be cause for rejection of

shipment. Also, evidence of free-flowing water/brine in particular shipments may be cause for rejection.

Upon inspection of delivered salt, the material shall be uniform in appearance, free flowing and free from visual evidence of foreign matter including but not limited to dirt, stone, chips, trash or any other material that could reasonably be expected to interfere with the use, handling or storage of the salt. Salt shall be received in a free-flowing and usable condition.

The right is reserved to consider truckloads of salt delivered by the Contractor to any one Authorized User on a single day to be a single delivery. Price deductions imposed because of contamination may be imposed on the total day's delivery.

If the Authorized User accepts contaminated salt (salt delivered in a lumpy condition which requires reprocessing in order to make it usable shall be cause for rejection of the entire delivery, with a replacement delivery to be made at no additional charge to the Authorized User.

If, because of emergency conditions, it is necessary to accept and reprocess the Salt for use, all costs will be charged to the Contractor. For operational reasons, a 10% price deduction may be placed on the Contractor by the Authorized User after consultation with the Contractor and OGS Procurement Services.

Agencies will submit to OGS supporting documentation for price deduction in regard to contamination. OGS Procurement Services will review and will have final approval as to price deduction applied.

3.9.6 Non-Complying Product – Price Deduction

A non-complying product price deduction is not to be assessed unless the proper analysis and test procedures are followed. If the Contractor consistently delivers salt found to be outside the specification requirements for moisture content, or consistently not conforming to the gradation requirements, the Contract shall be subject to cancellation either in whole or in parts.

The right is reserved to consider truckloads of salt delivered by the Contractor to any one Authorized User on a single day to be a single delivery. Price deductions imposed because of deviation from specifications may be imposed on the total day's delivery.

3.9.7 Acceptance

The salt may be rejected if it fails to conform to any of the requirements of this Award or the specifications in Attachment 9 – *Road & Treated Salt Specifications*.

3.9.8 Weight Tickets

All shipments of bulk salt shall be accompanied by a weight ticket of a licensed weigh master indicating the producer, net weight of the delivery, and in the case of bulk delivery, the stockpile source. Tickets should be completely filled out with hauler name (printed and signed) and AU rep name printed and signed (if AU rep is present at the time of delivery).

The certification must bear the weigh master's signature; weights shall be recorded from a scale equipped with a weight printing device. **Handwritten weights are not acceptable.**

In the event that handwritten tickets must be used, the Contractor must contact OGS Procurement Services to obtain approval prior to delivery of the order.

3.9.9 Delivery Timetable

Completed delivery, at the latest, is required as follows:

- Contractor is required to deliver orders of 600 tons or less* within three (3) Business Days.
- Contractor will be required to deliver a minimum of 200 tons per day after the initial 600-ton delivery.
- Multiple orders placed for the same delivery site that overlap will be viewed as a single order, still subject to the overall 200 tons per day minimum delivery.

Authorized Users are advised not to place orders that exceed their maximum storage capacity. See below, Delivery Timetable Example for more information.

<u>Single Order Placed on</u>	<u>First 600 Tons or Less* Delivered by</u>	<u>601 - 800 Tons Delivered by</u>	<u>801 -1000 Tons Delivered by</u>	<u>Over 1000 Tons Delivered by</u>
Monday	Thursday	Friday	Monday	200 Tons/Day/Location
Tuesday	Friday	Monday	Tuesday	200 Tons/Day/Location
Wednesday	Monday	Tuesday	Wednesday	200 Tons/Day/Location
Thursday	Tuesday	Wednesday	Thursday	200 Tons/Day/Location
Friday	Wednesday	Thursday	Friday	200 Tons/Day/Location

*if full amount of order is less than 600 tons

Delivery Timetable Example

An order of 1,400 tons placed on Monday shall be delivered as follows (or sooner):

<u>Order Placed on</u>	<u>Thursday Delivery</u>	<u>Friday Delivery</u>	<u>Monday Delivery</u>	<u>Tuesday Delivery</u>	<u>Wednesday Delivery</u>
Monday	600 tons	200 tons	200 tons	200 tons	200 tons

Note: Authorized Users are advised that their supply should be replenished on an ongoing basis, as it is depleted. It is not advised to run down the supply of product until it is dangerously low. This can cause undue stress to the delivery network during high levels of demand, which can be compounded by inclement weather conditions that adversely impact transit times for deliveries.

3.9.10 Delivery Rate Guarantees/Exceptions

The guaranteed delivery in number of Business Day(s) required to make delivery after receipt of a Purchase Order shall be applicable in accordance with Section 3.9.9 - *Delivery Timetable*, and the Contractor is obligated to honor same from September 1 through the following May 31 of each Contract term. However, from June 1 through August 31 of each Contract term, delivery shall be at the discretion of the Contractor.

Contractor shall notify the Authorized User and OGS Procurement Services promptly regarding anticipated performance issues such as low supply, late delivery, lack of Product, and insufficient hauling capability. Failure by the Contractor to do so may result in liquidated damages and/or a buy against in accordance with Section 3.9.11 - *Liquidated Damages* and Section 3.9.12 - *Buy Against*.

Although Contractors are expected to make every effort to meet these delivery timeframes, some exceptions may be made for extreme road and/or weather conditions (e.g. roadways that are closed, obstructed, or impassable due to winter weather conditions). Allowances for exceptions must be approved by the Office of General Services, Procurement Services, whose decision shall be final. Delivery will be allowed during the weekend and on State holidays only if the Contractor and the ordering Authorized User mutually agree. No additional remuneration will be made for a Saturday, Sunday, or holiday delivery.

3.9.11 Liquidated Damages

During the Contract period, each September through the following May 31, deliveries that do not meet the daily delivery tonnage requirements and/or the established order completions period specified, shall be considered cause for interruption of the proper implementation of the State's winter roadway safety. If it is determined that the interruption is caused by non-performance or negligence on the part of the Contractor, OGS Procurement Services and the Contractor presume that in the event of any such delay, the amount of damage that is sustained from a delay in daily delivery tonnage requirements and/or the established order completions period specified, is the greater of either:

1. \$100.00 per Business Day per Purchase Order or individual orders against blanket Purchase Orders, as applicable; or
2. 1% of the value of the Purchase Order or individual orders against blanket Purchase Orders, as applicable, for each Business Day that the breach is not cured by the Contractor.

OGS Procurement Services and the Contractor agree that in the event of any such delay the awarded Contractor shall pay such amount as liquidated damages.

During times when an Authorized User must work with the Contractor to prioritize/coordinate deliveries due to delays, the Contractor is not absolved from meeting delivery timetable requirements at other locations. During times of extreme weather activity that impact deliveries system-wide, OGS may consider waiving liquidated damages.

The following options may be used by Authorized Users for deducting amounts due to the Contractor because of liquidated damages:

1. Authorized User may deduct such amount from any money payable to the Contractor, or
2. Authorized User may bill the Contractor separately.

Costs incurred include, but are not limited to the following:

- Increased personnel costs due to demurrage;
- Increased costs incurred for treatment of salt on hand to extend usage;
- Costs for clean-up after required application of alternative snow and ice control materials (i.e. salt mixed with sand).

Liquidated damages may be applied to the Contractor by the Authorized User only after consultation with the Contractor and OGS Procurement Services. A request for the application of liquidated damages must be made to OGS within thirty (30) days of the event. Damages must be memorialized by supporting documentation that must be provided to OGS Procurement Services for review and approval.

3.9.12 Buy Against

Contractors must supply Product in accordance with the terms of the Contract and instructions on Purchase Orders. In the event of the Contractor's failure to deliver in accordance with Contract requirements, purchase of a specific quantity (pre-determined by OGS), from the Emergency Standby Contract (Lot IV;) or the open market at the Contractor's expense may be authorized by OGS. Such authorized purchases will result in chargeback of the cost above the Contract price to the Contractor who fails to comply with delivery terms.

The Authorized User must make OGS Procurement Services aware of the non-delivery and allow OGS Procurement Services to ascertain if immediate delivery can be made by the Contractor prior to obtaining authorization from OGS Procurement Services to make an Emergency Standby (LOT IV) purchase or a purchase on the open market.

If open market Treated Salt is not readily available, the Authorized User at their discretion may purchase Road Salt, in lieu of Treated Salt, for the undelivered quantity from the Emergency Standby Road Salt Contract (Lot IV), and if not available through the Emergency Standby Contract, from the open market. Any price difference above the Contract price of Treated Salt (Lot II and/or Lot III) will be deducted from future payments or billed to the Treated Salt Contractor. The Contractor of the Road Salt in this case may not be the non-performing Contractor of the Treated Salt (Lot II and/or Lot III). The Authorized User must obtain authorization to use this option also from OGS Procurement Services.

3.10 Emergency Standby Road Salt (LOT IV) Use Guidelines

It is the intention of the Emergency Standby Road Salt (Lot IV) to be utilized when emergency purchases of Road Salt are determined to be necessary (e.g. to be used for an impending storm when reserves are insufficient, and/or if the primary Contractor is unable to make a delivery when needed by the Authorized User).

Emergency Standby Road Salt (Lot IV) will be a multiple award Contract where one or more Contractors have an award for a county, resulting from prices awarded under Award 23248.

These Emergency Standby Road Salt (Lot IV) purchases may be made only after:

- A. The Contractor has failed to perform, or an Authorized User has need to purchase due to an extenuating circumstance; and**
- B. Authorization for the purchase has been granted by OGS Procurement Services**

3.10.1 Lot I – Road Salt

In the event that a Contractor has failed to perform, State agencies and municipalities who filed requirements for the current Road Salt Contracts under Lot I of Awards 23134, 23175, 23212, and 23248, may make purchases from Lot IV.

If the current awarded Contractor for Road Salt is unable to supply needed Product the Authorized User may "charge back" the difference in price to the awarded Contractor under the applicable Group 01800 – Award for Lot I. For more information see section "Emergency Standby Road Salt (Lot IV) Purchases – Buy Against" below.

In the event that an Authorized User has been impacted by extenuating circumstances, approval to purchase using Emergency Standby Road Salt (Lot IV) may be granted by OGS Procurement Services. This action will not result in a charge back to the awarded Contractor and is not dependent on the Authorized User having filed requirements for the current Road Salt Contracts under Lot I.

3.10.2 Lot II and Lot III – Treated Salt

OGS Procurement Services may, on a case by case basis, approve emergency purchases to be made by State agencies and municipalities (i.e. Authorized Users) who filed requirements under Lots II and III (Treated Salt – Type 1 and Type 2) for Awards 23134, 23175, 23212, and 23248.

In these cases, Road Salt would be provided in lieu of Treated Salt. State agencies and municipalities may charge back the difference in price to their original Treated Salt Contractor under Awards 23134, 23175, 23212, and 23248, as applicable. For more information see section “Emergency Standby Road Salt (Lot IV) Purchases – Buy Against Process” below.

The Contractor providing Emergency Standby Road Salt in lieu of Treated Salt shall not be the non-performing supplier of the Treated Salt (Lot II and Lot III).

3.10.3 Emergency Standby Road Salt (Lot IV) Purchases – Ordering Process

After receiving OGS Procurement Services approval, Authorized Users should review all applicable Contractors awarded under Emergency Standby Road Salt (Lot IV) as a result of Award 23248.

The Authorized User may request a quote from all awarded Contractors in the county and use the results to place a Purchase Order. The quote should specifically address delivery time and ability to deliver which may be a determining factor in the choice of Contractor.

Contractors are not required to lower prices when they receive a quote request and may quote their Contract awarded price. However, at no time, may a price be quoted that is higher than the Contract price be acceptable. Any awarded price can be lowered by the Contractor during the quote process.

3.10.4 Emergency Standby Road Salt (Lot IV) Purchases – Buy Against Process

In the event that the awarded Contractor has failed to perform, the difference between the current awarded price for Road Salt (Lot I) and the amount paid for prices under Emergency Standby Road Salt (Lot IV) may either be deducted or “charged back” by the Authorized User in one of the following ways:

- a). When an invoice is due:
Authorized User may deduct the additional increased amount from the amount due to the Contractor in that invoice under the applicable current Lot I Award
- b). When an invoice is not due:
The awarded Contractor will issue a credit or refund to the Authorized User for the difference in price between the amount owed under Lot I Award and the amount due to the Contractor

3.11 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.

3.12 On Ground/Delivered Inventory

Contractor shall have the following on-ground/delivered inventory reserved solely for Office of General Services Authorized Users as follows:

- October 1, 2021 - 50% of filed requirement for awarded counties
- November 1, 2021 - 70% of filed requirement for awarded counties

After November 1, 2021, the Contractor is obligated to maintain inventories adequate to provide deliveries as requested in the time frames and quantities requested. Any failure by the Contractor to deliver pursuant to contract terms may result in a "buy against" to that Contractor in accordance Section 3.9.12 - *Buy Against*.

Contractor shall be required to provide OGS Procurement Services with biweekly status updates of inventory on hand throughout the winter season that is dedicated to Authorized Users under the Contract. This shall include detailed information regarding tonnage currently in inventory at stockpile locations which is dedicated to Authorized Users of the Contract, and anticipated production or delivery of additional tonnage necessary to meet contractual requirements.

If at any time during the contract period, extenuating circumstances arise, and it is determined by the Office of General Services that the Contractor does not have adequate inventory, award may be made at the discretion of the Office of General Services to another Bidder.

3.13 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).

3.14 Minimum Order

The minimum order for this Contract is 22 tons.

3.15 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>.

3.16 Optional Delayed Billing Program

Contractor, at its option, may participate in a delayed billing program for the benefit of political subdivisions for orders delivered during September, October, and November 2021. Payment would not be required until January 2022. This program would be available to encourage fall season filling of stockpiles and storage sheds and accommodate the budget process of the political subdivisions. This program would be coordinated directly by the end user with the particular Contractor. Contractor may also delay crediting/debiting fuel price adjustments until the end of the contract with the concurrence of the end users. Contractor must advise end users how they intend to process invoices upon receipt of first purchase order for salt. No changes to agreed-upon processing methodology may be made during the contract period.

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.

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 Extension of Use

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

3.19 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://nyspro.ogs.ny.gov/content/nys-emarketplace-1>

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 is also implementing the PeopleSoft Inventory module in the near future to track inventory items within the item master table. Further information regarding business processes, interfaces, and file layouts may be found at: <http://www.sfs.ny.gov> and <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

3.20 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*.

3.21 Report of Contract Usage

Contractor shall submit Attachment 8 – *Report of Contract Usage* including total sales to Authorized Users of this Contract by Contractor, and all authorized resellers, dealers and distributors, if any, no later than 10 days after the first day of each month. 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 monthly report.

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

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

The report in Attachment 8 – *Report of Contract Usage* contains the minimum information required. Additional related sales information, such as detailed user purchases may be required by OGS and must be supplied upon request. Failure to submit reports on a timely basis may result in Contract cancellation and designation of Contractor as non-responsible.

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

I. New York State Law

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

II. General Provisions

- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for MWBEs. Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. 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, liquidated damages pursuant to clause IX of this section, and/or enforcement proceedings as allowed by the Contract and applicable law.

III. Equal Employment Opportunity (EEO)

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000, for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to, the contracting State agency (the "Work") except where the Work is for the beneficial use of the Contractor.
 1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate, or distinct from the Contract; or (ii) employment outside New York State.
 2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor's equal employment opportunity policy. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.
- B. Form EEO 100 - Staffing Plan.

To ensure compliance with this section, the Contractor agrees to submit or has submitted with the Bid a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories
- C. Form EEO 101 - Workforce Utilization Reporting Form (Commodities and Services) ("Form EEO-101-Commodities and Services")
 1. The Contractor shall submit, and shall require each of its subcontractors to submit, a Form EEO-101-Commodities and Services to OGS to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic

background, gender, and Federal occupational categories. The Form EEO-101-Commodities and Services must be submitted electronically to OGS at EEO_CentCon@ogs.ny.gov on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January.

2. Separate forms shall be completed by Contractor and any subcontractor.
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, all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. Contract Goals

- A. OGS hereby establishes an overall goal of 20% for MWBE participation, 10% for Minority-Owned Business Enterprises ("MBE") participation and 10% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs) during the term of this Contract in the following counties: **Albany, Allegany, Bronx, Cattaraugus, Cayuga, Chautauqua, Clinton, Columbia, Cortland, Dutchess, Erie, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Kings, Lewis, Livingston, Madison, Monroe, Montgomery, Nassau, New York, Niagara, Oneida, Onondaga, Ontario, Orange, Orleans, Oswego, Putnam, Queens, Rensselaer, Richmond, Rockland, Saratoga, Schenectady, Schoharie, Seneca, St. Lawrence, Suffolk, Sullivan, Ulster, Warren, Washington, Wayne, Westchester, Wyoming, Yates.**

The total Contract goal can be obtained by utilizing any combination of MBE and /or WBE participation for subcontracting and supplies acquired under the Contract.

- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract goals established in clause IV-A hereof, Contractor should reference the directory of New York State Certified MWBEs found at the following internet address:
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. The MWBE Regulations are located at 5 NYCRR § 140 – 145. Questions regarding compliance with MWBE participation goals should be directed to the Designated Contacts within the OGS Office of Minority- and Women Owned Businesses Enterprises. 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.
- C. Contractor must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract (see clause VII below).

V. MWBE Utilization Plan

- A. In accordance with 5 NYCRR § 142.4, Bidders are required to submit a completed Utilization Plan on Form MWBE 100 with their bid.
- B. The Utilization Plan shall list the MWBEs the Bidder intends to use to perform the Contract, a description of the Contract scope of work the Bidder intends the MWBE to perform to meet the goals on the Contract, the estimated or, if known, actual dollar amounts to be paid to an MWBE. By signing the Utilization Plan, the Bidder acknowledges that making false representations or including information evidencing a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by New York State Certified MWBEs after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to OGS.
- C. By entering into the Contract, Bidder/Contractor understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. When an MWBE is serving as a broker on the Contract, only 25 percent of all sums paid to a broker shall be deemed to represent the commercially useful function performed by the MWBE.
- D. OGS will review the submitted MWBE Utilization Plan and advise the Bidder of OGS acceptance or issue a notice of deficiency within 30 days of receipt.
- E. If a notice of deficiency is issued; Bidder agrees that it shall respond to the notice of deficiency, within seven (7) business days of receipt, by submitting to OGS a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by OGS to be inadequate, OGS shall notify the Bidder and direct the Bidder to submit, within five (5) business days of notification by OGS, a request for a partial or total waiver of MWBE participation goals on Form BDC 333. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- F. OGS may disqualify a Bidder's bid/proposal as being non-responsive under the following circumstances:
- (a) If a Bidder fails to submit an MWBE Utilization Plan;
 - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
 - (c) If a Bidder fails to submit a request for waiver; or
 - (d) If OGS determines that the Bidder has failed to document good faith efforts.
- G. If awarded a Contract, Contractor certifies that it will follow the submitted MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in clause IV-A of this Section.
- H. Bidder/Contractor further agrees that a failure to submit and/or use such completed MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, OGS shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

VI. Request for Waiver

- A. Prior to submission of a request for a partial or total waiver, Bidder shall contact the Designated Contacts listed on page 1 of this document for guidance.
- B. In accordance with 5 NYCRR § 142.7, a Bidder/Contractor who is able to document good faith efforts to meet the goal requirements, as set forth in clause VII below, may submit a request for a partial or total waiver on Form BDC 333, accompanied by

supporting documentation. A Bidder may submit the request for waiver at the same time it submits its MWBE Utilization Plan. If a request for waiver is submitted with the MWBE Utilization Plan and is not accepted by OGS at that time, the provisions of clauses V(C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, OGS shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) business days of receipt.

- C. Contractor shall attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to OGS, but must be made no later than prior to the submission of a request for final payment on the Contract.
- D. If OGS, upon review of the MWBE Utilization Plan and Monthly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, OGS may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE contract goals.

VII. Required Good Faith Efforts

In accordance with 5 NYCRR § 142.8, Contractors must document their good faith efforts toward utilizing MWBEs on the Contract. Evidence of required 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.

VIII. Monthly MWBE Contractor Compliance Report

- A. In accordance with 5 NYCRR § 142.10, Contractor is required to report Monthly MWBE Contractor Compliance to OGS during the term of the Contract for the preceding month's activity, documenting progress made towards achievement of the Contract MWBE goals. OGS requests that all Contractors use the New York State Contract System ("NYSCS") to report subcontractor and supplier payments made by Contractor to MWBEs performing work under the Contract. The NYSCS may be accessed at <https://ny.newnycontracts.com/>. This is a New York State-based system that all State agencies and authorities will be implementing to ensure uniform contract compliance reporting throughout New York State.

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- B. When a Contractor receives a payment from a State agency, it is the Contractor's responsibility to pay its subcontractors and suppliers in a timely manner. On or after the first day of each month, the Contractor will receive an email or fax notification ("audit notice") indicating that a representative of its company needs to log-in to the NYSCS to report the company's MWBE subcontractor and supplier payments for the preceding month. The Contractor must also report when no payments have been made to a subcontractor or supplier in a particular month with entry of a zero-dollar value in the NYSCS. Once subcontractor and supplier payments have been entered into the NYSCS, the subcontractor(s) and supplier(s) will receive an email or fax notification advising them to log into the NYSCS to confirm that they actually received the reported payments from the Contractor. It is the Contractor's responsibility to educate its MWBE subcontractors and suppliers about the NYSCS and the need to confirm payments made to them in the NYSCS.
- C. To assist in the use of the NYSCS, OGS recommends that all Contractors and MWBE subcontractors and suppliers sign up for the following two webinar trainings offered through the NYSCS: "**Introduction to the System - Vendor training**" and "**Contract Compliance Reporting - Vendor Training**" to become familiar with the NYSCS. To view the training schedule and to register visit:
<https://ny.newnycontracts.com/FrontEnd/TrainingList.asp>
- D. As soon as possible after the Contract is approved, Contractor should visit <https://ny.newnycontracts.com> and click on "**Account Lookup**" to identify the Contractor's account by company name. Contact information should be reviewed and updated if necessary, by choosing "**Change Info.**" It is important that the staff member who is responsible for reporting payment information for the Contractor be listed as a user in the NYSCS. Users who are not already listed may be added through "**Request New User.**" When identifying the person responsible, please add "**MWBE Contact**" after his or her last name (i.e., John Doe – MWBE Contact) to ensure that the correct person receives audit notices from the NYSCS. NYSCS Technical Support should be contacted for any technical support questions by clicking on the links for "**Contact Us & Support**" then "**Technical Support**" on the NYSCS website.
- E. If Contractor is unable to report MWBE Contractor Compliance via the NYSCS, Contractor must submit a Monthly MWBE Contractor Compliance Report on Form MWBE 102 to OGS, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: OGS MWBE Office, 29th floor Corning Tower, Empire State Plaza, Albany, NY 12242. Phone: 518-486-9284; Fax: 518-486-9285.
- F. It is the Contractor's responsibility to report subcontractor and supplier payments. Failure to respond to payment audits in a timely fashion through the NYSCS, or by paper to OGS, may jeopardize future payments pursuant to the MWBE liquidated damages clause in clause IX below.
- IX. Breach of Contract and Liquidated Damages
Where OGS determines that the Contractor is not in compliance with the requirements of this Contract, and the Contractor refuses to comply with such requirements, or if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, the Contractor shall be obligated to pay liquidated damages to OGS.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and

2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

C. If OGS determines that Contractor is liable for liquidated damages and such identified sums have not been withheld by OGS, Contractor shall pay such liquidated damages to OGS within sixty (60) days after they are assessed. Provided, however, that if the Contractor has filed a complaint with the Director of the Division of Minority and Women's Business Development pursuant to 5 NYCRR § 142.12, liquidated damages shall be payable only in the event of a determination adverse to the Contractor following the complaint process.

X. 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://www.ogs.ny.gov/MWBE/Forms.asp>

3.23 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, 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, 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/default.asp>

Contractor is encouraged to contact the Division of Service-Disabled Veteran's Business Development at 518-474-2015 to discuss methods of maximizing participation by SDVOBs on the Contract.

ALL FORMS ARE AVAILABLE AT: <https://ogs.ny.gov/Veterans/default.asp>

3.24 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.

3.25 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 Award. 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*.

3.26 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://www.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.

3.27 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.

3.28 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 Contractor 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.

3.29 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.

3.30 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.

3.31 Drug and Alcohol Use Prohibited

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

3.32 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.

3.33 Samples

- A. **Contract Supplied Samples** - The Commissioner reserves the right to request from the 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 cancellation of the Contract. Samples must be submitted free of charge and be accompanied by the Contractor'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 Contractor 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 Contractor, at the Contractor's expense and risk. Where the Contractor 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 Award. 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 Award, 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 Award, Contractor samples consumed or rendered useless by testing will not be returned to the Contractor. 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.

SECTION 4: PRICING

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

http://www.ogs.ny.gov/purchase/spg/lists/gp_018.asp

**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 OGS.sm.SST roadsalt@ogs.ny.gov or mail to:

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