

State of New York Executive Department
Office Of General Services
New York State Procurement
Corning Tower Building - 38th Floor
Empire State Plaza
Albany, New York 12242
www.ogs.ny.gov

CONTRACT AWARD NOTIFICATION

Title	:	Group 38614 - Traffic Safety Equipment - Highway Roadway Safety Barriers (Crash Cushions, & Truck Mounted Attenuators: Systems, Parts & Accessories) (Statewide) Classification Code(s): 25, 30, 46 & 92
Award Number	:	<u>21253</u>
Contract Period	:	September 11, 2008 to September 30, 2013
Bid Opening Date	:	January 10, 2008
Date of Issue	:	September 11, 2008 REVISED – August 6, 2013
Specification Reference	:	As Incorporated in the Invitation For Bids
Contractor Information	:	Appears on Page 2 of this Award

Address Inquiries To:

State Agencies & Vendors	Political Subdivisions & Others
Name : James E. Malone Title : Purchasing Officer 1 Phone : 518-473-2428 Fax : 518-474-8676 E-mail : james.malone@ogs.ny.gov	Customer Services Phone : 518-474-6717 Fax : 518-474-2437 E-mail : customer.services@ogs.ny.gov

**The New York State Procurement values your input.
Complete and return "Contract Performance Report" at end of document.**

Description

Traffic Safety Equipment includes crash cushions and a variety of barricades, which are precautionary barriers which passively assist in channeling traffic, while also preventing vehicles from impacting major structures such as bridge supports and lighting and utility equipment. Also included are attenuators which serve to protect the rear of large slow moving service vehicles and trailers or stationary structures in the event of a collision, while also absorbing and dispersing the force of the impact so as to concentrate the accident zone and minimize the effect on additional lanes of traffic. Additionally, they are used to assist and protect our road crews in construction and service zones and are important tools for ensuring safe travel on roads and highways throughout the State of New York.

PR # 21253

(continued)

Group 38614 - Traffic Safety Equipment - Highway Roadway Safety Barriers (Crash Cushions, & Truck Mounted Attenuators: Systems, Parts & Accessories) (Statewide) REVISED AWARD PAGE 2

NOTE: See individual contract items to determine actual awardees.

CONTRACT #	CONTRACTOR & ADDRESS	TELEPHONE #	FED.IDENT.#
PC64073 SB	Eberl Iron Works, Inc. 128 Sycamore Street Buffalo, NY 14204	(716) 854-7633 (800) 285-3056 Toll Free (716) 854-1184 Fax Gregory Jones greg.jones@eberliron.com www.eberliron.com	160417520
Contractor accepts N.Y.S. Procurement Card for purchases up to \$15,000.00			
PC64074 SB	Impact Absorption, Inc. 233 East Shore Road, Suite 210 Great Neck, NY 11023 Mailing Address: PO Box 220292 Great Neck, NY 11021	(718) 229-0046 (877) 229-5819 Toll Free (718) 225-2845 Fax Michael Kempen mkempen@impactabsorption.com www.barriersystemsinc.com	113421420
PC64076	Traffix Devices, Inc. 160 Avenida La Pata San Clemente, CA 92673	(949)361-5663 (877)930-5663 Toll Free (949)361-1822 Fax Jack H. Kulp info@traffixdevices.com www.traffixdevices.com	330217824
Contractor accepts N.Y.S. Procurement Card for purchases up to \$15,000.00 Traffix Devices, Inc. also offers Electronic Access Ordering (EDI)			
PC64077	Transpo Industries, Inc. 20 Jones Street New Rochelle, NY 10801	(914) 636-1000 (800) 321-7870 Toll Free (914) 636-1282 Fax Janice Fernandez jfernandez@transpo.com www.transpo.com	132615924
Contractor accepts N.Y.S. Procurement Card for purchases up to \$15,000.00			
PC64078	Work Area Protection Corporation 2500 Production Drive St. Charles, IL 60174	(630) 377-9100 (800) 327-4417 Toll Free (630) 377-9270 Fax Joe Ford workarea@workareaprotection.com www.workareaprotection.com	521488457
Contractor accepts N.Y.S. Procurement Card for purchases up to \$15,000.00 Contractor offers 1% Cash Discount for payment within 30 days of delivery and/or receipt of voucher.			

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

(continued)

**INVOICES MUST BE SENT DIRECTLY TO THE ORDERING AGENCY FOR PAYMENT.
(See "Contract Payments" and "Electronic Payments" in this document.)**

AGENCIES SHOULD NOTIFY THE NEW YORK STATE PROCUREMENT 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 THE NEW YORK STATE PROCUREMENT.

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.

RECYCLED, REMANUFACTURED AND ENERGY EFFICIENT PRODUCTS:

The New York State Procurement 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.

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

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).

I. OVERLAPPING SOURCES OF SUPPLY

A. LIKE ITEMS AVAILABLE FROM THE CONTRACTORS FOR INDUSTRIAL AND COMMERCIAL EQUIPMENT AND SUPPLIES, OTHER CONTRACTS FOR SPECIFIC PRODUCTS, AND PREFERRED SOURCES

Comprehensive contracts, such as these for transportation equipment and supplies, provide a valuable, cost saving method for acquiring necessary products and supplies. These contracts, when used in conjunction with other contracts for more specific products issued by the Office of General Services, New York State Procurement, provide using agencies and statewide users with the flexibility necessary to optimize procurement activities and maximize value. While this overlap allows users to easily purchase a broad spectrum of products, more than one contract may exist for the same or similar products. This places a responsibility on users to build a Procurement Record detailing their choice based on cost, need (form, function and utility) and value (quality, cost and efficiency). The following guidelines are provided to help agencies effectively utilize them any procurement options offered by the New York State Procurement, in conjunction with Preferred Source product requirements.

(continued)

Group 38614 - Traffic Safety Equipment - Highway Roadway Safety Barriers (Crash Cushions, & Truck Mounted Attenuators: Systems, Parts & Accessories) (Statewide) REVISED AWARD PAGE 4

I. OVERLAPPING SOURCES OF SUPPLY: (Continued)

B. PREFERRED SOURCES

Preferred Source organizations are designated in the State Finance Law for some products covered by the industrial supply contracts. Section 162 of the State Finance Law requires that agencies afford first priority to the products of preferred sources when such products meet the form, function and utility of the agency. Some products in the contract(s) may be available from one or more preferred sources. Agencies are reminded to comply with the statutory requirements and Procurement Council guidelines with respect to affording first priority to the preferred sources.

Contractors are required to prominently display the following language on all price lists and contract updates to agencies relative to the award:

Agencies Note: Some products in this contract may be available from one or more preferred sources. Agencies are reminded to comply with the statutory requirements under Section 162 of the State Finance Law and the guidelines issued by the State Procurement Council to afford first priority to products available from preferred sources which meet your form, function and utility.

As with purchases from centralized state contracts, preferred source purchases can be made without the need for competitive bid solicitations, resulting in administrative savings. A more detailed review of the preferred source offerings is available on the OGS Home Page, www.ogs.ny.gov, as explained herein, or by contacting the preferred source directly.

<p>CORCRAFT - New York State Dept. of Correctional Services</p>	<p>INDUSTRIES FOR THE BLIND OF NEW YORK STATE, INC.</p>
<p>Division of Industries 550 Broadway Albany, NY 12204 Phone: 518/436-6321, Ext. 217 or 1/800-436-6321 FAX: 518/472-1614 or 1/800-898-5895 E-Mail: marketing@corcraft.org Web Address: http://www.corcraft.org</p>	<p>230 Washington Avenue Extension - Suite 106 Albany, NY 12203-5316 Phone: 518/456-8671 FAX: m 518/456-3587 E-mail: info@ibnys.org Web Address: www.ibnys.org</p>
<p>New York State INDUSTRIES for the DISABLED, INC.</p>	<p>New York State OFFICE OF MENTAL HEALTH</p>
<p>155 Washington Avenue - Suite 400 Albany, NY 12210 Phone: 800/221-5994 518/463-9706 FAX: 518/463-9708 E-mail: admin.nysid.org Web Address: www.nysid.org</p>	<p>Buy OMH 44 Holland Avenue Albany, NY 12229 Phone: 518/473-8561 FAX: 518/473-0066</p>

These organizations are designated in the State Finance Law as preferred sources for some products covered by the industrial supply contracts. Section 162 of the State Finance Law requires that agencies afford first priority to the products of preferred sources when such products meet the form, function and utility of the agency. Some products in the contract(s) may be available from one or more preferred sources. Agencies are reminded to comply with the statutory requirements and guidelines with respect to affording first priority to the preferred sources.

Contractors are required to prominently display the following language on all price lists and contract updates to agencies relative to the award:

Agencies Note: Some products in this contract may be available from one or more preferred sources. Agencies are reminded to comply with the statutory requirements under Section 162 of the State Finance Law and the guidelines issued by the State Procurement Council to afford first priority to products available from preferred sources which meet your form, function and utility.

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B. PREFERRED SOURCES (Cont'd.)

As with purchases from centralized state contracts, preferred source purchases can be made without the need for competitive bid solicitations, resulting in administrative savings. A more detailed review of the preferred source offerings is available on the OGS website, www.ogs.ny.gov/procurecounc/pdfdoc/psguide.pdf, as explained herein, or by contacting the preferred source directly.

C. CONTRACTOR STOCKING AND FURNISHING PRODUCTS OF PREFERRED SOURCES

Contractor(s) shall stock and deliver products of preferred sources where practical and feasible. Contractor(s) shall be encouraged to stock and deliver products of preferred sources when:

- Requested by the involved preferred source; and
- Delivered pricing to the receiving facilities from the contractor is no more than delivered pricing from the preferred source.

The upcharge and method of calculating pricing for preferred source products shall be the same as for products from other sources.

Participating agencies may purchase products from preferred sources either directly from the involved preferred source OR from the contractor; either purchasing method complies with the Preferred Source requirement.

D. CENTRALIZED CONTRACTS FOR SPECIFIC PRODUCTS

Competitively bid contracts for specific products are also established by OGS covering materials, equipment, and supplies. Product specific contracts may provide significant value to a purchasing agency if the minimum order and delivery requirements or product selection meet your needs. We ask that you carefully review these alternatives for your purchases or to supplement your purchases when practical and maintain a Procurement Record documenting the basis for this selection.

E. PROCUREMENT PROCEDURES FOR STATE AGENCIES

The purpose of these contracts is to provide contract users with a means of acquiring transportation safety equipment and supplies which are purchased repetitively. There will be situations when it will be necessary to acquire equipment and supplies in quantities which will result in larger dollar value purchase orders. Users should consider that there could be more than one source for the products they require and should seek the best value purchase most appropriate for their needs. Users should be able to document their choice and maintain justification for the Procurement Record to support both the selection of the vendor and the reasonableness of the price to be paid.

II. GUIDELINES FOR PRODUCT SELECTION FROM OVERLAPPING SOURCES OF SUPPLY

The goal of the OGS' New York State Procurement is to provide agencies with cost effective procurement alternatives which meet customer needs and facilitate the achievement of customer's primary missions. With greater choices, however, comes greater responsibility to choose wisely. These guidelines are intended to be a template to facilitate your selection process. Your questions, comments and suggestions on these and any other procurement issue are welcome.

State agencies are to follow the steps listed herein to assist in the choice of the most practical and economical alternative when more than one source or more than one product is available which may meet the agency's needs. While the dollar figures suggested herein are for use by State agencies, and the preferred source requirements are for those obligated by New York State Law to give priority to the preferred sources, we also recommend that all other contract users consider these guidelines when choosing from multiple contract options, to ensure a satisfactory and cost effective solution.

A. Determining Sources of Supply - Internet Assistance

Documents available on the Internet include: OGS centralized contracts, List of Preferred Source Offerings, & The State Procurement Council's Procurement Guidelines. Users can search, view and/or download centralized term contract awards and related information, by visiting the OGS NYSPRO Home Page, <http://www.ogs.ny.gov/purchase>

Possible overlapping products included in this award with Preferred Source items include: Reflective Safety Vests from the Industries for the Blind of NYS and basic Channelizing Drums and Weights from the NYS Industries for the Disabled.

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II. GUIDELINES FOR PRODUCT SELECTION FROM OVERLAPPING SOURCES OF SUPPLY (Continued):

B. Product and Source Selection Criteria *Please See Special Note

If, after your review of State contracts and preferred sources, a product is:

1. Available from a preferred source in the form, function and utility required, proceed with the preferred source purchase.
2. Available from a preferred source but not in the form, function and utility required, notify the appropriate preferred source of your determination and provide the preferred source an opportunity for response as required in the preferred source guidelines. After this process is complete, if you are not purchasing from the preferred source item, proceed to step 3. **-or-**
Not available at all from a preferred source, proceed to step 3
3. Available from a product specific contract, proceed with the purchase.
4. Available from more than one product specific contract, choose the most cost effective option meeting your form, function and utility needs, document your choice and proceed with purchase.
5. Available only from a comprehensive contract (i.e. Industrial and Commercial Equipment) and the purchase is under \$15,000 in value, proceed with the purchase. If the purchase exceeds \$15,000 in value, contact the contractor to request additional discounts, document this effort and proceed with the purchase.
6. If available from several comprehensive contracts, choose the most cost effective, document the choice and proceed as outlined in step 5 with respect to dollar value of the purchase.
7. Available from both product specific and comprehensive contracts, choose the most cost effective option that meets your form, function and utility needs, document your decision, and proceed with the purchase.

***Special Note:**

The basis for selection among multiple contracts at the time of purchase shall be the most practical and economical alternative and shall be in the State's best interest taking into consideration:

- the form, function and utility needs of the purchaser;
- the price of a given good or service;
- the administrative, training, storage, maintenance or other overhead associated with the good or service;
- the value of warranties, delivery schedules, financing costs and foregone opportunity costs associated with the good or service;
- the life span and associated life cycle costs of the given good or service including but not limited to costs or savings associated with construction, energy use, maintenance, operation, salvage or disposal; and,
- when applicable, the experience of the purchaser with the contractor and/or contract products.

As guided by the procurement record requirements contained in the State Procurement Guidelines, purchasers should document the basis for the contract/product selection for internal purposes.

III. EXAMPLES of STATEWIDE OGS CENTRALIZED CONTRACTS with POSSIBLE OVERLAPPING PRODUCTS when compared to these contracts:

- Group 38612 - Award 20187 - Traffic Safety Products – Cones, Channelizing Drums, Flexible Delineator Posts
- Group 38612 - Award 19230 - Rollup Signs and Stands
- Group 38625 - Award 20867 - Plastic Pavement Marking Material
- Group 39000 - Award 20304 - Industrial and Commercial Supplies and Equipment.
- Group 38232 - Award 19745 - Hazardous Incident Response Equipment

(continued)

Group 38614 - Traffic Safety Equipment - Highway Roadway Safety Barriers (Crash Cushions, & Truck Mounted Attenuators: Systems, Parts & Accessories) (Statewide) REVISED AWARD PAGE 7

NYSPro's DISPUTE RESOLUTION POLICY:

It is the policy of the Office of General Services' New York State Procurement (NYSPro) to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to NYSPro bid solicitations or contract awards. NYSPro encourages vendors to seek resolution of disputes through consultation with NYSPro staff. All such matters will be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of NYSPro's Dispute Resolution Procedures for Vendors may be obtained by contacting the person shown on the front of this document or through the OGS website (www.ogs.ny.gov).

ELECTRONIC PAYMENTS:

The Office of the State Comptroller (OSC) offers an "electronic payment" option in lieu of issuing checks. To obtain an electronic payment authorization form visit the OSC website at www.osc.state.ny.us or contact them by e-mail at epunit@osc.state.ny.us or by phone at 518-474-4032.

The following are terms and conditions and additional discounts relating to purchase from these contract:

PRICE:

General - Price includes all customs duties and charges and is net, F.O.B. Destination, any point in New York State, as designated by the ordering agency including dock delivery and tailgating of load.

In addition, upon mutual agreement, delivery locations may be expanded per the "Extension of Use" Clause.

Discounts - Prices are from the manufacturer's nationally published Retail Price List as designated. Discount rates bid are generally in effect for the entire contract period. Decreases of the discount rates bid will not be allowed at any time. However, discount rates may be increased at the contractors' option on either an individual order or long term basis at any time. In the event of a long term increase in the discount rate, the Purchasing Officer should be notified as to the discount rate and duration. Price lists submitted with the bid are to remain in effect until August 31, 2008. After that time contractor may submit new retail price lists when they **normally** are published. Effective date of new price lists will be when they have been **reviewed and approved by OGS and a notification to participating agencies is published on the OGS website**. Review will include a comparison with market trends at the time of the submission verses those at the time of the bid opening and may include research data collected and published by both private sector and public sector agencies and services. The benchmarks for this process will include and be based on:

- American Metals Market Steel Base Price - Hot Dipped Galvanized Sheet Steel - January 3, 2008 -- 40.50
- American Metals Market Scrap Iron & Steel Broker Price - #1 Heavy Melt - Buffalo, NY - Jan. 3,2008 -- 235.00
- Steel Benchmark Bi-Weekly Index - Hot Rolled Band - USA, East of Mississippi - Dec 24, 2007 - 621.00
- New York Mercantile Exchange - COMEX Aluminum Futures - Most Recent Settlement for Jan. 3 ,2008 -- 110.5
- Plastics News Volume Thermoplastics - ABS High Impact Plastic - Low Volume Ave.- 1/2008 - 101.0
- Plastics News Volume Thermoplastics - HDPE Extrusion Pipe - Low Volume Ave.- 1/2008 - 104.5
- U.S. Dept of Labor - Bureau of Labor Statistics - Producer Price Indices for January 2008:
 - Fabricated Structural Metal Manufacturing - ID# PCU332312332312P - 189.3
 - High Strength Structural Hardware Manufacturing - ID# PCU3327223327223133 - 162.6

If any of the referenced indices changes or is removed, an index deemed appropriate by the Procurement Service Group will be used in its place. In such instance, the base would change to that of the new referenced index.

Should new submissions be found to be not reasonable, contractor may submit a revision upon notification.

Contractor shall submit new price lists prior to publishing date if possible.

If a situation exists where the contractor sells product to the public at large with pricing that is lower than the application of the bid/contract discount to the full list price, then the price that is charged to the public at large should be charged to contract participants. This should be clearly shown on the invoice as a "Special Value", or as "Lower Than Application of Discounts to Full List Price", or by some other phrase or identifying designation.

Minimum Order - Minimum order shall be \$1000 per order, per dealer. Items under the same contract number may be combined to reach minimum value.

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

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PRICE: (Continued)

Fuel Surcharge - The State will consider the implementation of a fuel surcharge as a result of national or worldwide situations. The contractor may submit a request for a reasonable fuel surcharge semi-annually on March 1st and September 1st starting in September, 2008. The fuel surcharge shall be equal to or less than the charge imposed by the freight carriers. The request must be accompanied by freight invoices, which show the amount paid to the freight company. The surcharge shall become effective when it is approved by OGS and posted to the website.

Government Mandated Program Adjustment -An adjustment in product and/or price may be permitted if a government mandated program, such as a new Federal Highway Administration Specification Standards, take effect and suitable documentation is furnished to the State and the State determines the requested change is verifiable and is reasonable. Replacement product would be subject to NYS Department of Transportation testing and approval. Such a price adjustment may be permitted for only a limited time since such an adjustment would eventually be reflected in the price list(s).

Catalog Contents - The catalog should be inclusive of replacement parts and products which may be necessary for field service as well as including options and additional accessories that may be available for this commodity or traffic safety needs.

Price List Updates - Please see the section titled "**Discounts**" as found on page 7.

Inclusion of New Products - Contractor shall offer products that are openly listed in the catalog and price list. New products added to the manufacturer's catalog may be accepted after review and approval by OGS New York State Procurement when they are introduced. In the event new products are announced during the contract period, contractor agrees to furnish in triplicate any catalog amendment showing list and net prices at which new products may be purchased. These new items placed on the market during the contract period are to be offered at the percentage discount rate that has been previously bid.

It is the contractor's responsibility to inform the OGS Purchasing Officer of any new products in a timely manner. A Purchasing Memorandum notification from OGS to participating agencies will be published to announce any changes in the catalog, and said changes become effective on the date of memorandum publication.

Contractor should note, inclusions approved by OGS are subject to a post audit by the Office of the State Comptroller.

Discontinuation of Catalog Item - Contractor shall notify the Purchasing Officer, in a timely fashion of any discontinuation of items covered by the catalog. The notification should include the date of loss of availability and the current inventory level for the product. If there is a catalog replacement for an item, the vendor shall follow the instructions of the previous paragraph and include it with their notification to the purchasing officer. The vendor shall provide with the notification, complete information on the replacement product including, but not limited to: a Specification List, Function and Feature List, and Comparison of Performance between the new and old product.

Contractor should note discontinuations approved by OGS are subject to a post audit by the Office of the State Comptroller. Items discontinued from production without replacement may have a notification Purchasing Memorandum issued by the Office of General Services to announce the discontinuation. Unless otherwise specified, any substitution of product prior to approval by the Office of General Services may be cause for cancellation of contract.

Catalog Exclusions - The New York State Office of General Services New York State Procurement reserves the right to delete before or after award any of the products included in the contractor's catalog. Catalog may list products covered by other State contracts as well as those available from preferred sources. It is the obligation of the agencies to order from the appropriate source. (See also "**Overlapping Contract Items**" Section beginning on 3).

Update Publication - For both price list updates and new products, the contractor shall send three copies to the OGS Purchasing Officer. New pricing and new catalog products will not be effective until reviewed, approved and published by OGS. It is the contractor's responsibility to inform OGS in a timely manner of these changes. In all situations, a Purchasing Memorandum notification from OGS to participating agencies will be published to announce any changes in the catalog, and said changes become effective on the date of memorandum publication. Should new submissions be found to be not reasonable, contractor may submit a revision upon notification.

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Group 38614 - Traffic Safety Equipment - Highway Roadway Safety Barriers (Crash Cushions, & Truck Mounted Attenuators: Systems, Parts & Accessories) (Statewide) REVISED AWARD PAGE 9

PRICE: (continued)

Unworkable Price Structure - Should the price structure utilized by the parties become unworkable, detrimental or injurious to the State and/or Contractor or result in prices which are not truly reflective of current market conditions, and the price is deemed unreasonable or excessive by the Commissioner and no adjustment in price is mutually agreeable, the Commissioner 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 based on an unworkable price structure, 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 Office of General Services, New York State Procurement. Such notification shall not relieve the contractor of its responsibilities under the contract.

The State reserves the right to implement changes in price based on unforeseen factors such as dramatic changes in availability, delivery, costs, etc., for product, supplies, etc., that substantively affect the contractor's business processes or that may impact contract pricing. Such changes may be based on information from the U.S. Bureau of Labor Statistics, industry data, or other sources.

PURCHASE ORDERS AND INVOICING:

General – All orders and invoices/vouchers should include the contract number and a line by line listing of separate charges.

Invoices - Contract users are instructed not to process invoices without needed information. Invoices must be detailed and include **all** of the following:

- Contract Number
- Purchase Order Number
- Item Number
 - Should not be something that is “unique” to dealer or distributor.
 - Should be something that can be tracked by a third party.
 - Preferably a manufacturer's code or identifying number.
- Line item breakdown of all charges:
- Line item breakdown of any deletion:

Failure to comply may result in lengthy payment delays.

NOTE TO AGENCY:

Orders under this contract are to be submitted directly to the contractor.

NEW YORK STATE PROCUREMENT CARD:

Some Contractors have indicated that they will accept the NYS Purchasing Card for orders not to exceed \$15,000.00. See page 2 for indication of acceptance.

(continued)

Group 38614 - Traffic Safety Equipment - Highway Roadway Safety Barriers (Crash Cushions, & Truck Mounted Attenuators: Systems, Parts & Accessories) (Statewide) REVISED AWARD PAGE 10

ITEMS BID:

ITEM #1	
Vendor: Eberl Iron Works, Inc.	
Single Catalog w/Multiple Product Line Discounts	
Catalog Identification:	Traffic Safety Products
Dated:	2008 - 2011
Price List Identification:	TSP Price List 2011
Dated:	May 2011 (OGS Contract Web – Price List #2 : updated October, 2011)
Discount Rate:	MULTIPLE LINE
Additional Volume Discounts:	An additional 1% is to be added to all purchase orders over \$10,000 to the original rates shown below.
Additional Cash Discount:	None
Product Line 1:	TYPE 3 Barricades
Brand:	American Louver/Plasticade, Eberl Iron Works, Filtrona Extrusion/Davidson, & Highway Safety Devices Int. Co.
Catalog Pages:	17, 18, 26, 27
Discount Rate:	50% off list.
Product Line 2:	Safe Hit Surface Barricades
Brand:	Safe Hit Barracuda
Catalog Pages:	27
Discount Rate:	45% off list
Product Line 3:	Additional Catalog Items as per the catalog & pricelist
Catalog Pages:	Page 2 Through Rear Cover
Discount Rate:	40% off List
Product Line 4:	TTMA 100 Attenuator
Brand:	Gregory Industries, Inc. dba – Gregory Highway Products.
Catalog Pages:	Price List – end page Product information may be obtained online at: http://www.gregorycorp.com/highway_attenuator_features.cfm .
Discount Rate:	40% off list
CATALOG EXCLUSIONS:	Type A & U Channel Sign Posts Channelizing Drums, Yellow and White Safe Hit Posts
DELIVERY	30 Days ARO
Distribution Center:	Buffalo , NY
Warranty	As Per Catalog

(continued)

Group 38614 - Traffic Safety Equipment - Highway Roadway Safety Barriers (Crash Cushions, & Truck Mounted Attenuators: Systems, Parts & Accessories) (Statewide) REVISED AWARD PAGE 11

ITEMS BID: (Continued) ITEM #1 Awarded to Eberl Iron Works, Buffalo, NY

PC #	<u>Contractor: Eberl, Iron Works</u>		
Lead Contract Administrator:	John Eberl, Sales & Marketing Director		
	Order Inquiries and Expediting	After Hours Emergency Contact & Technical Information	
Name:	Gregory Jones	John C. Eberl	
Title:	Customer Service	Sales & Marketing Director	
Telephone Number:	(716) 854-7633	(716) 854-7633	
Toll Free Telephone Number:	(800) 285-3056	(800) 285-3056	
Fax Number:	(716)854-1184	(716)854-1184	
Cellular Phone Number:	N/A	(716)860-3288	
E-Mail Address:	Greg.jones@eberliron.com	John.Eberl@eberliron.com	
Company's Normal Business Hours:	8:00 A. M. to 4:30 P. M. (Eastern Time), Monday thru Friday		

ITEM #2	
Vendor: Impact Absorption Inc.	
Single Catalog w/ Single Product Line Discounts	
Catalog Identification:	Barrier Systems /Renco
Dated:	2008 - 2011
Price List Identification:	Impact Absorption Price List 2011
Dated:	May 2011 (OGS Contract Web – Price List #2 : Updated October 2011)
Discount Rate:	0% off list
Additional Volume Discounts:	Yes
Volume Discount Method:	2% off orders in excess of \$130,000
Additional Cash Discount:	None
Product Line:	TAU II Impact Attenuators, Temporary Impact Attenuator – Redirective, Temporary Impact Attenuator – Gating, Trailer Mounted Attenuator
Brand:	Barrier Systems, Inc., Renco, Inc.
Catalog Pages:	All
CATALOG EXCLUSIONS:	None
DELIVERY	45 Days ARO
Distribution Center:	Hatfield, PA
Warranty	1 Year

Item #2 Awarded to Impact Absorption, Inc., Douglaston, NY

PC #	<u>Contractor: Impact Absorption, Inc.</u>		
Lead Contract Administrator:	Michael Kempen, President		
Telephone Number:	(718) 229-0046	Cellular Phone Number:	(646) 752-3810
Toll Free Telephone Number:	(877) 229-5819	Fax Number:	(718) 225-2845
E-Mail Address:	mkempen@nyc.rr.com	Company's Normal Business Hours:	10:00 A. M. to 6:00 P. M. (Eastern Time), M-F

(continued)

Group 38614 - Traffic Safety Equipment - Highway Roadway Safety Barriers (Crash Cushions, & Truck Mounted Attenuators: Systems, Parts & Accessories) (Statewide) REVISED AWARD PAGE 12

ITEMS BID (Cont'd):

ITEM #4	
Vendor: Traffix Devices, Inc.	
Single Catalog w/Multiple Product Line Discounts	
Catalog Identification:	Traffix Devices, Inc. Product Guide
Dated:	October 2007
Discount Rate:	Multiple Lines
Additional Volume Discounts:	Yes
Method of Volume Discount	Increased Discount Rate based on Dollar Volume – varies per product line
Additional Cash Discount:	NO
Product Line 1:	Drums, Temporary Tubular Markers, Vertical Panels, TYPE I, II, & III Barricades, Portable Sign Stands, Roll Up Signs, Stop/Slow Paddles,
Brand:	TDI
Catalog Pages:	2-23,33-51
Price List Identification:	January 2006
Discount Rate:	17% Off List
Volume Discount:	22% @ \$5000.00
Volume Discount:	27% @ \$15,000.00
Product Line 2:	Vests
Brand:	TDI
Catalog Pages:	48-51
Price List Identification:	April 2006
Discount Rate:	17%
Volume Discount:	22% at \$5000
Volume Discount:	27% @ \$10,000
Product Line 3:	Big Sandy Sand Barrels & The TDI Water Wall
Brand:	TDI
Catalog Pages:	56, 64-65
Price List Identification:	Mar-06
Discount Rate:	17% off List
Volume Discount:	22% at \$10,000
Volume Discount:	27% @ \$25,000
Product Line 4:	Scorpion Truck Mounted Attenuator
Brand:	TDI
Catalog Pages:	57-59
Price List Identification:	Mar-06
Discount Rate:	16% off List
Volume Discount:	21% @ \$40,000
Volume Discount:	26% @ \$65,000

(continued)

Group 38614 - Traffic Safety Equipment - Highway Roadway Safety Barriers (Crash Cushions, & Truck Mounted Attenuators: Systems, Parts & Accessories) (Statewide) REVISED AWARD PAGE 13

ITEMS BID (Cont'd):

ITEM #4 - (cOntinued):	
Vendor: Traffix Devices, Inc.	
Single Catalog w/Multiple Product Line Discounts	
Catalog Identification:	Traffix Devices Inc. Product Guide
Dated:	October 2007
Discount Rate:	Multiple Lines
Additional Volume Discounts:	Yes
Method of Volume Discount	Increased Discount Rate based on Dollar Volume – varies per product line
Additional Cash Discount:	NO
Product Line 5:	Scorpion Trailer Attenuator
Brand:	TDI
Catalog Pages:	60-61
Price List Identification:	Sept. 25, 2007
Discount Rate:	21% off List
Volume Discount:	24% @ \$45,000
Volume Discount:	28% @ \$75,000
CATALOG EXCLUSIONS:	28" Traffix Cone, 28" Temporary Tubular Markers, Non Reflective Grabber Tubes, NON SHEETED: Phoenix Rail, Traffix Rail and Breakaway Types 1,2 &3 Barricades.
DELIVERY	20 Days ARO
Warranty	Varies per Product See Catalog for Details
Distribution Center:	Fairfield, IA

Item #4 Awarded to Traffix Devices, Inc., San Clemente, CA

PC #	Contractor: Traffix Devices, Inc.		
Lead Contract Administrator:	Julie Edwards, Contract Specialist		
	Order Inquiries & Expediting	After Hours & Emergency Contact	Technical Assistance & After Hours, Emergency Contact
Name:	Julie Edwards	John Risley	Jan Miller
Title:	Contract Specialist	NE Regional Sales Mgr.	Business Development Mgr.
Telephone Number:	(954) 455-3050	(610) 337-9556	(607) 732-5698
Toll Free Telephone #:	(800) 342-7215	n/a	n/a
Fax Number:	(954) 455-9886	(610) 377-0201	(607) 732-5698
Cellular Phone Number:	(954) 298-5548	(610) 662-7173	(607) 732-5698
E-Mail Address:	jedwards@traffixdevices.com	jrisley@traffixdevices.com	jmiller@traffixdevices.com
Company's Normal Business Hours: 7:30 A. M. to 4:30 P. M. Monday thru Friday; PLEASE NOTE : Ms Edwards is in the Pacific Time Zone.- Mr Risley & Mr Miller are under Eastern Time.			

(continued)

Group 38614 - Traffic Safety Equipment - Highway Roadway Safety Barriers (Crash Cushions, & Truck Mounted Attenuators: Systems, Parts & Accessories) (Statewide) REVISED AWARD PAGE 14

ITEMS BID (Cont'd):

ITEM #5	
Vendor: Transpo Industries, Inc.	
Single Catalog w/Multiple Product Lines—Single Rate	
Catalog Identification:	2008 Transpo Industries, Inc.
Dated:	1/2/08
Price List Identification:	2008 Transpo Industries Price List
Dated:	Jan-08
Product Line 1:	Pole Safe, Break Safe, Step Safe Products
Discount Rate:	0% Price per List
Product Line 2:	ALL OTHER PRODUCT LINES
Discount Rate:	3% off listed price for NEAT, Quad- Guard Systems, Truck Mounted and Trailer Mounted Attenuators, Triton Barriers and Vulcan Barriers. 2% off listed price on all other remaining product lines.
Additional Volume Discounts:	None
Additional Cash Discount:	None
Brand:	Energy Absorption Systems Division of Quixote Industries
CATALOG EXCLUSIONS:	The GREAT System and Hex Foam Systems
DELIVERY	3-21 Days
Warranty	1 year
Distribution Center:	Pell City, AL/New Rochelle, NY

Item #5 Awarded to Transpo Industries, Inc., New Rochelle, NY

PC #	<u>Contractor: Transpo Industries, Inc.</u>	
Lead Contract Administrator:	Janice Fernandez. Sales Manager	
	Order Inquiries and Expediting	After Hours Emergency Contact & Technical information
Name:	Janice Fernandez	- SAME -
Title:	Sales Manager	
Telephone Number:	(914) 636-1000	
Toll Free Telephone Number:	(800) 321-7870	
Fax Number:	(914) 636-1282	
Cellular Phone Number:	(914) 441-0307	
E-Mail Address:	jfernandez@transpo.com	
Company's Normal Business Hours:	8:30 A. M. to 5:00 P. M. (Eastern Time), Monday thru Friday	

USERS NOTE:

Please note the **Catalog Exclusions** listed above. Parts and accessories for The GREAT System and Hex Foam Systems are no longer available on contract. These systems are not NCHRP 350 Certified for Impact Safety as required. Should you currently have either of the systems in use, consider updating the installation to a system which has been certified as meeting the NCHRP 350 crash test requirements.

In the event of an accident causing minor damage to these units, repair parts are available through Transpo, as an open market/discretionary purchase. Should serious damage to these units occur and major repair be required, replacement with an approved model is recommended at that time.

(continued)

Group 38614 - Traffic Safety Equipment - Highway Roadway Safety Barriers (Crash Cushions, & Truck Mounted Attenuators: Systems, Parts & Accessories) (Statewide) REVISED AWARD PAGE 15

ITEMS BID (Cont'd):

ITEM #6	
Vendor: Work Area Protection Inc.	
Single Catalog w/Multiple Product Line Discounts	
Catalog Identification:	SCI/WAP 0606 ATT
Dated:	June 2006
Price List Identification:	WAP 0107 ATT
Dated:	January 2007
Additional Volume Discounts:	YES
Method of Volume Discount	Attenuators Only Additional 5% off on 8 units
Additional Cash Discount:	Yes
Method of Cash Discount:	1% 10 Net 30
Product Line 1:	ATTENUATORS
Brand:	Work Area Protection
Discount Rate:	10%
Product Line 2:	Parts and Accessories
Brand:	Work Area Protection
Discount Rate:	0%
CATALOG EXCLUSIONS:	None
DELIVERY	10 Calendar Days ARO
Warranty	1 year
Distribution Center:	Harrisburg PA

Item #6 Awarded to Work Area Protection, Inc., St. Charles, II

PC #	<u>Contractor: Work Area Protection, Corp.</u>	
Lead Contract Administrator:	Joe Ford, Vice President – National Sales Manager	
Lot #: II Item 8	Order Expediting	After Hours Emergency Contact
Name:	Barb Ray	Joe Ford
Title:	Customer Service Representative	Vice President - Sales
Telephone Number:	(630) 377-9100	(856)
Toll Free Telephone Number:	(800) 327-4417	(800) 327-4417
Fax Number:	(630) 377-9270	(630) 377-9270
Cellular Phone Number:	n/a	(856) 270-4558
E-Mail Address:	bray@sciproductsinc.com	jford@sciproductsinc.com
Company's Normal Business Hours:	<u>9:00 A. M. to 6:00 P. M. (Eastern Time), Monday thru Friday</u>	

(continued)

DELIVERY:

General - Delivery is expressed in number of calendar days required to make delivery after receipt of a purchase order (ARO). Product will be required as soon as possible.

Purchase Order Instructions - Delivery shall be made in accordance with instructions on purchase order from each agency. If there is a discrepancy between the purchase order and what is listed on the contract, it is the contractor's obligation to seek clarification from the ordering agency and, if applicable, from the Office of General Services, New York State Procurement. (See also: separate clause on: "PURCHASE ORDERS AND INVOICES" as found on page 9).

Shipping Dates And Delivery Time -

- Contractor shall provide written acknowledgement of orders within five (5) business days after receipt of order which will include an anticipated shipping date of each order.
- If shipment will not be made within the delivery time, the contractor is required to notify the 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 using agency, 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.

Expansion of Delivery Points - Upon mutual agreement, delivery locations may be expanded per the "Non-State Agencies Participation in Centralized Contracts" and "Extension of Use" clauses incorporated herein.

Delivery Condition - 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.

NOTE TO AGENCY:

NYS agencies and/or political subdivisions whose receiving facilities cannot accommodate entrance of an over the road trailer with a height of 13'-6" or overall length of 40' must specify on their purchase order.

ie: "Maximum trailer height (or length) for delivery to this location is ____." (insert dimension in this space).

CONTRACT PAYMENTS:

Payments cannot be processed by State facilities until the contract products have been delivered in satisfactory condition or services have been satisfactorily performed. Payment will be based on any invoice used in the supplier's normal course of business. However, such invoice must contain sufficient data including but not limited to contract number, description of product or service, quantity, unit and price per unit as well as federal identification number.

State facilities are required to forward properly completed vouchers to the Office of the State Comptroller for audit and payment. All facilities are urged to process every completed voucher expeditiously giving particular attention to those involving cash discounts for prompt payment.

If the contract terms indicate political subdivisions and others authorized by law are allowed to participate, those entities are required to make payments directly to the contractor. Prior to processing such payment, the contractor may be required to complete the ordering non-State agency's own voucher form.

See also "Contract Billings" in Appendix B, OGS General Specifications and separate clause above on "PURCHASE ORDERS AND INVOICING".

(continued)

PERIODIC RECRUITMENT:

The State reserves the right to consider additional vendors beginning in September 2008 and at six month intervals thereafter during the course of the contract or at any time determined by the State to be in its best interest. Vendors shall be required to submit an original bid document which may include an addendum containing additional applicable statutory requirements currently in effect at the time of the new bid solicitation. Bids shall be evaluated under similar terms and conditions. Once awarded a contract, a vendor may not resubmit a bid for future consideration until the original bids have been evaluated and contracts awarded.

CANCELLATION FOR CONVENIENCE

The State of New York retains the right to cancel this contract, in whole or in part without reason provided that the Contractor is given at least sixty (60) days notice of its intent to cancel. This provision should not be understood as waiving the State's right to terminate the contract for cause or stop work immediately for unsatisfactory work, but is supplementary to that provision. Any such cancellation shall have no effect on existing Agency agreements, which are subject to the same 60 day discretionary cancellation or cancellation for cause by the respective user Agencies

CONTRACT PERIOD AND RENEWALS:

General - It is the intention of the State to enter into a contract for the term as stated on the Invitation for Bids except, that per the terms of the Contract Period and Extension/Renewal clause of the Invitation for Bids, the commencement and termination dates appearing on the Invitation for Bids have been adjusted forward unilaterally by the State for this contract by two calendar months, as indicating said change on this Contract Award Notification.

Contract Renewal - If mutually agreed between the New York State Procurement and the contractor, the contract may be renewed under the same terms and conditions for additional period(s) not to exceed a total contract term of five (5) years.

SHORT TERM EXTENSION:

In the event the 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 one month upon notice to the contractor with the same terms and conditions as the original contract including, but not limited to, quantities (prorated for such one month extension), prices, and delivery requirements. With the concurrence of the contractor, the extension may be for a period of up to three months in lieu of one month. However, this extension terminates should the replacement contract be issued in the interim.

EXTENSION OF USE:

These contracts may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State (the lead contracting 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.

NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS:

New York State political subdivisions and others authorized by New York State law may participate in these 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 "Participation in Centralized Contracts" in Appendix B, OGS General Specifications. 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 (www.ogs.ny.gov). Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to OGS New York State Procurement's Customer Services at 518-474-6717.

(continued)

CONTRACT MIGRATION:

State Agencies or any other authorized user holding individual contracts with contractors under this centralized contract shall be able to migrate to this contract award with the same contractor, effective on the contract begin date (retroactively, if applicable). Migration by an agency or any other authorized user to the centralized contract shall not operate to diminish, alter or extinguish any right that the agency or other authorized user otherwise had under the terms and conditions of the original contract.

EMERGENCY PURCHASING:

In the event that a disaster emergency is declared by Executive Order under Section 28 of Article 2-B of the Executive Law, or that the Commissioner determines pursuant to his/her authority under Section 163(10)(b) of the State Finance Law that an emergency exists requiring the prompt and immediate delivery of products or services, the Commissioner reserves the right to obtain such products or services from any source, including but not limited to this contract, as the Commissioner in his/her sole discretion determines will meet the needs of such emergency. Contractor shall not be entitled to any claim or lost profits for products or services procured from other sources pursuant to this paragraph.

RESERVATION:

The State reserves the right to negotiate lower pricing, or to advertise for bids, any unanticipated excessive purchase. An "unanticipated excessive purchase" is defined as an unexpected order for a contract product(s) totaling \$100,000.00.

WARRANTIES:

See "Warranties" in Appendix B, OGS General Specifications.

"OGS OR LESS" GUIDELINES APPLY TO THIS CONTRACT:

Purchases of the products included in the Invitation For Bids and related Contract Award Notification are subject to the "OGS or Less" provisions of Section 163.3.a.v., Article XI, of the New York State Finance Law. This means that State agencies can purchase products from sources other than the contractor provided that such products are substantially similar in form, function or utility to the products herein and are:

1. lower in price
-and/or-
2. available under terms which are more economically efficient to the State agency (e.g. delivery terms, warranty terms, etc.).

Agencies are reminded that they must provide the State contractor an opportunity to match the non-contract savings at least two business days prior to purchase. In addition, purchases made under "OGS or Less" flexibility must meet all requirements of law including, but not limited to, advertising in the New York State Contract Reporter, prior approval of the Comptroller's Office and competitive bidding of requirements exceeding the discretionary bid limit. State agencies should refer to Procurement Council Bulletin "OGS or Less Purchases" for complete procedural and reporting requirements.

(continued)

PRODUCT DISCONTINUATION AND SUBSTITUTION:

In the event a specified manufacturer's product listed in the Contract becomes unavailable or cannot be supplied by the Contractor for any reason (except as provided for in the Savings/Force Majeure

Provision of Appendix B, General Specifications) a product deemed in writing by the Office of General Services to be equal to or better than the specified product must be substituted by the Contractor at no additional cost or expense to the Authorized User.

It is the vendor's responsibility to inform the Office of General Services, Purchasing Officer, in a timely fashion. The notification should include the date of loss of availability and the current inventory level for the product. The contractor shall provide to OGS NYSPRO, complete information on the replacement product including, but not limited to: a Specification List, Function and Feature list and Comparison of Performance between the new and old product. Upon approval by the Office of General Services

Unless otherwise specified, any substitution of Product prior to the Commissioner's written approval may be cause for cancellation of contract. In the event that a contractor is unable to provide a replacement, it is the State's right to cancel the contract.

REQUEST FOR CHANGE:

Any request by the agency or contractor regarding changes in any part of the contract must be made in writing to the Office of General Services, New York State Procurement, prior to effectuation.

DIESEL EMISSION REDUCTION ACT OF 2006 (NEW REQUIREMENT OF LAW):

On February 12, 2007 the Diesel Emissions Reduction Act took effect as law (the "Law"). Pursuant to new §19-0323 of the N.Y. Environmental Conservation Law ("NYECL") it is now 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. They need to be operated exclusively on ULSD by February 12, 2007. 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.

As a contract vendor the Law may be applicable to vehicles used by contract vendors "on behalf of" State agencies and public authorities. Thirty-three percent (33%) of affected vehicles must have BART by December 31, 2008, sixty-six percent (66%) by December 31, 2009 and one-hundred percent (100%) by December 31, 2010. The Law provides a list of exempted vehicles. Regulations currently being drafted will provide further guidance as to the effects of the Law on contract vendors using heavy duty diesel vehicles on behalf of the State. The Law also permits waivers of ULSD and BART under limited circumstances at the discretion of the Commissioner of Environmental Conservation. The Law will also require reporting from State agencies and from contract vendors in affected contracts.

Therefore, the bidder hereby certifies and warrants that all heavy duty vehicles, as defined in NYECL §19-0323, to be used under this contract, will comply with the specifications and provisions of NYECL §19-0323, and any regulations promulgated pursuant thereto, which requires the use of BART and ULSD, unless specifically waived by NYSDEC. Qualification and application for a waiver under this Law will be the responsibility of the bidder.

RECALLS:

The contractor must immediately notify the Office of General Services, New York State Procurement of any recalls pertaining to product on contract.

(continued)

Group 38614 - Traffic Safety Equipment - Highway Roadway Safety Barriers (Crash Cushions, & Truck Mounted Attenuators: Systems, Parts & Accessories) (Statewide) REVISED AWARD PAGE 20

PERFORMANCE REQUIREMENTS:

Customer Support - The contractor shall provide toll-free telephone support/assistance at no extra charge to all customers

Discrepancies - The contractor shall resolve all order and invoice discrepancies (e.g., shortages, breakages, etc.) within five business days from notification.

Product Returns - Problem Products - Products returned because of quality problems, duplicated shipments, outdated product, etc., shall be picked up by the contractor within five business days after notification with no restocking charge and shall be replaced with specified products or the agency shall be credited/refunded for the full purchase price.

Product Returns, Agency Error - Standard stock products ordered in error by agencies must be returned for credit within 15 days of receipt. Product must be in resalable condition (original container, unused). There shall be no restocking fee if returned products are resalable.

Price Lists and Catalogs - Contractor shall be required to furnish, without charge, catalog and price lists identical to those accepted with their bid, including any changes (additions, deletions, etc.) pursuant to the contract, to all authorized users which request them. Catalogs and price lists provided must reflect all products excluded from the resultant contract either through the omission of those portions or by obvious indications within the catalogs and price lists. Fulfillment of any request must be made within 14 calendar days of the request.

Catalogs and price lists may be furnished in either hard-copy or electronic format. If available in both formats, they shall be furnished in the format preferred by the requesting authorized user. Upon request the contractor shall assist authorized users in the use of catalogs and price lists. Price lists provided to contract users under this contract should contain Net Prices reflecting the proper discounts for appropriate product lines.

Instruction Manuals - Simultaneous with delivery, the contractor(s) shall furnish to the authorized user a complete instruction manual for the product and for each component supplied. The manual shall include complete instructions for diagrams, schematic and wiring diagrams, preventive and corrective maintenance procedures, and complete parts lists, manufacturer's catalog numbers, and ordering information, if applicable.

Report of Contract Purchases - Contractor shall furnish a report containing both state agency and authorized non-state agency contract purchases by the fifteenth of the month following the end of each six month period. In addition to contractor direct sales, contractor shall submit sales information for all resellers, dealers, distributors or other authorized distribution channels, where such contract sales are provided by other than the contractor. Contractors shall verify if each alternate vendor is a NYS Certified Minority (MBE) or Women (WBE) Owned Businesses. Contractors shall verify such status through the Empire State Development Minority and Women Owned Businesses Database web site at: <http://205.232.252.35/>.

A separate report shall be provided in the following format for each authorized distribution channel. The sales report form is forwarded to each contractor at time of award for completion in accordance with the contract terms and conditions.

The reports shall be in the following format:

Item #	Product Description	Sold to/Shipped to	Quantity	Unit Price	Total Dollar Value
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The report is to be submitted to the Office of General Services, New York State Procurement, Tower Bldg., Empire State Plaza, Albany, NY 12242, to the attention of the individual shown on the front page of the Contract Award Notification and shall reference the Group Number, the Invitation for Bids Number, Contract Number, sales period, and contractor's name.

Additional related sales information, such as monthly reports, and/or detailed user purchases may be required and must be supplied upon request.

Failure to submit the required report may be cause for disqualification of contractor for future contracts.

(continued)

POOR PERFORMANCE:

Agencies should notify Procurement Services' Customer Services promptly if the contractor fails to meet the requirements of this contract. Performance which does not comply with requirements or is otherwise unsatisfactory to the agency should also be reported to Customer Services:

Office of General Services	Tel: 518/474-6717
New York State Procurement	Fax: 518/474-2437
Customer Services Coordination	E-mail: customer.services@ogs.ny.gov
37th Floor Corning Tower	
Empire State Plaza	
Albany, NY 12242	

NOTE TO CONTRACTOR:

Prior to the initial purchase of any NHCRP 350 Category III or Test level 2 or Test Level 3 designated item, the New York State Department of Transportation reserves the right to request submission of product samples for testing, approval and subsequent listing on the Department's Approved Lists. This requirement may be waived for products that have previously been appointed to and are currently on the list, however the State may at anytime request a product be retested.

Testing of these items will require contractors to prepare and submit copies of drawings, specifications, test reports, and Federal acceptance letters as directed. The review process requires a minimum of 30 calendar days. Physical inspection of the product will be at the request of the State. Upon approval, the name of the manufacturer and the product will be placed on the Approved List. Failure of a product to qualify will result in the issuance of a Purchasing Memorandum to advise buyers of the test results.

Bidders shall also supply upon request a certified test report for tensile strength, yield point, drop-weight tear requirements or any other parameters specified in the IFB for the products listed in your offering.

The State also reserves the right to test any product and/or material supplied by a contractor at any time for compliance to specifications, and assess to the contractor total test cost for non-compliance. **It is the contractor's responsibility to make sure that all items delivered meet the State's specifications at all times.**

NOTE TO CONTRACTOR:

This Contract Award Notification is not an order. Do not take any action under this contract except on the basis of purchase order(s) from the agency or agencies.

(continued)

**State of New York
Office of General Services
NEW YORK STATE PROCUREMENT
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 by FAX to 518/474-2437 or mail to:

OGS NEW YORK STATE PROCUREMENT
 Customer Services, 38th Floor
 Corning 2nd Tower - Empire State Plaza
 Albany, New York 12242

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