Group 72007– Award 22935
Heavy Equipment Rental

HOW TO USE THE CONTRACTS

PROCUREMENT METHOD

The following procurement instructions shall apply to the Contracts under Award 22935. Authorized User Rentals under this Award shall be made through a competitive Rental Quote Process, as described in further detail below.

A. When utilizing the Contract, the Authorized User should be familiar with and follow the terms and conditions governing its use. The Authorized User is accountable and responsible for compliance with the requirements of public procurement processes. The Authorized User, when using 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 contract use which should include:

- A statement of need and associated requirements;
- Obtaining all necessary prior approvals;
- A summary of the Contract alternatives considered for the Rental, if any; and
- The reason(s) supporting the resulting Rental.

B. An Authorized User shall review the documents posted on the OGS website (see Rental Area, Equipment List Contracts and associated Contractor information and Contract Pricelists) on the OGS website at http://www.ogs.ny.gov/purchase/spg/awards/7200722935CAN.HTM, and determine which Contractors offer the type of Heavy Equipment required for Rental in the county where the Heavy Equipment shall be used.

Please be advised that the Contract Pricelists include Ceiling Prices for all Heavy Equipment available for Rental under the Contract, and applicable Delivery Charges. “Ceiling Price” refers to a maximum price that Contractor may charge an Authorized User for a service offered under the Contract. For additional information about contract pricing, see the Contract Template, Section III.1 *Heavy Equipment Rental Prices*.

C. Rental Quote Process: Rental to Authorized Users under this Contract shall be made through a competitive Rental Quote Process as described below. The Contractor shall only provide a Rental under this Contract when the Authorized User has submitted a Rental Quote Request and subsequently requests a Rental as the result of this Rental Quote Process. See http://www.ogs.ny.gov/purchase/spg/awards/7200722935CAN.HTM for forms used in the Rental Quote Process.

1. When a need is identified, an Authorized User is required to obtain all internal/control agency approvals necessary prior to initiating the Rental Quote Process. Upon internal/control agency approvals, the Authorized User shall complete a Rental Quote Request, which is posted on the OGS website at http://www.ogs.ny.gov/purchase/spg/awards/7200722935CAN.HTM. The Rental Quote Request shall identify such things as the number and type of Heavy Equipment needed, a description of the Heavy Equipment needed, and delivery and pickup requirements.

2. Upon completion of a Rental Quote Request, the Authorized User shall submit the request to at least three (3) Contractors for response. Rental Quote Requests may be submitted via email or fax, or in person. The emails and faxes shall be sent to the email address(es) and fax numbers set forth on the “Contractor Information” documents posted on the OGS website at http://www.ogs.ny.gov/purchase/spg/awards/7200722935CAN.HTM The Contractor shall be responsible for providing updated email address(es) during the Contract period to the Procurement Services Contract Administrator identified on the Contact Award Notification page posted at the OGS website.

3. From the send date and time of either the email or fax that includes the Rental Quote Request, or when it was presented in person, Contractors shall have a minimum of one (1) complete Business Day, not including either the day that the email or fax was sent, or the day it was presented in person, to submit a Rental Quote. The Authorized User reserves the right to set Rental Quote submittal deadlines that are shorter than one (1) business day in the event of an Emergency. The Rental Quote submittal deadline shall be included on each Rental Quote Request.

4. A Contractor must provide Rental Quotes to the Authorized User, using the method specified by the Authorized User on the Rental Quote Request, on the Rental Quote form posted on the OGS website at http://www.ogs.ny.gov/purchase/spg/awards/7200722935CAN.HTM. Instructions for completion are included on the form. A Rental Quote submitted in a format other than on the Rental Quote form may be rejected by the Authorized User.

5. The Authorized User shall be responsible for reviewing all Rental Quotes received and for selecting the Contractor with the lowest price, including the cost of Delivery, which can meet the requested need for Heavy Equipment Rental. The determination of whether or not the Heavy Equipment offered in the Rental Quote meets the Authorized User need is at the sole discretion of the Authorized User. If at least three (3) Rental Quotes are not submitted, the Authorized User must justify the reasonableness of the Contractor selection in their procurement record.

5. Authorized Users are instructed to notify the Contractor that has been selected to provide the Rental within two (2) business days of the deadline for submittal of the Rental Quote. Such notification may be via email, fax or phone, or in person, to the Contractor contact information set forth on the "Contractor Information" documents posted on the OGS website at http://www.ogs.ny.gov/purchase/spg/awards/7200722935CAN.HTM Contractors that submitted a Rental Quote but have not been selected shall be notified at the Authorized User's discretion.

   The Contractor is requested, but not obligated, to refrain from scheduling Rental of the Heavy Equipment specified in the Rental Quote to another customer on the Rental date(s) requested by the Authorized User, for two (2) business days from the deadline for submittal of the Rental Quote.

6. Upon selection of the Contractor to provide the Rental, the Authorized User shall issue a Purchase Order to the Contractor following the Authorized User's standard procedures and ensure that a copy of Rental Quote Request, Rental Quotes received and other pertinent documents are maintained for audit purposes following the Authorized User's standard procedures.

D. Authorized User Procurement Rights: Authorized Users reserve the right in the Rental Quote Process to:

1. Reject any or all responses received in response to a Rental Quote Request;
2. Withdraw the Rental Quote Request at any time, at the Authorized User's sole discretion;
3. Issue a Purchase Order for all or part of the number of pieces of Heavy Equipment requested in a Rental Quote Request;
4. Disqualify any Contractor submitting a Rental Quote whose conduct and/or proposal fails to conform to the requirements of the Rental Quote Request;
5. Seek clarifications and revisions of Rental Quotes;
6. Prior to the Rental Quote Request submittal deadline, amend the specifications to correct errors or oversights, or to supply additional information, as it becomes available;
7. Prior to the Rental Quote Request submittal deadline, direct Contractors to submit modifications addressing subsequent Rental Quote Request amendments;
8. Change any of the schedule dates with notification to all Contractors that received a Rental Quote Request from the Authorized User;
9. Eliminate any mandatory, non-material specifications that cannot be complied with by all of the Contractors that have submitted a Rental Quote in response to a Rental Quote Request;

10. Waive any requirements in the Rental Quote Request that are not material;
11. Utilize any and all ideas submitted in the Rental Quotes received;
12. Adopt all or any part of a Contractor's Rental Quote in selecting the optimum provider of the Heavy Equipment Rental.
13. Negotiate with the Contractor responding to the Rental Quote Request within the Rental Quote Request requirements to serve the best interests of the State. This includes requesting clarifications of any or all Contractor's Rental Quotes;
14. Require clarification at any time during the Rental Quote Process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Contractor's Rental Quote and/or to determine a Contractor's compliance with the requirements of the Rental Quote Request;
15. Select an alternate provider for the Heavy Equipment Rental other than the selected Contractor in the event of unsuccessful negotiations or, optionally, in other specified circumstances as detailed in the Rental Quote Request; and
16. Use information obtained through site visits, management interviews, and the state's investigation of a Contractor's qualifications, experience, ability or financial standing, and any material or information submitted by the Contractor in response to the Authorized User's request for clarifying information in the course of evaluation and/or selection under the Rental Quote Request.

AUTHORIZED USER RESPONSIBILITIES/RIGHTS

The Authorized User shall have the following responsibilities and rights in regards to the Heavy Equipment Rental. Se the Contract Template, posted at http://www.ogs.ny.gov/purchase/spg/awards/7200722935CAN.HTM for all Section references below.

A. Delivery: An Authorized User may choose to either use their own personnel and equipment for Delivery, or a third party provider.

B. Inspection: Upon Delivery, the Authorized User shall inspect the Heavy Equipment in accordance with Section III.4 *Delivery*, Paragraph D, and sign a mutually agreed-upon equipment condition report. After Authorized User inspection and execution of the condition report, the Authorized User shall sign a receipt certifying Delivery of the Heavy Equipment and mutual agreement with the equipment condition report (see Section III.3 *Rental Service Requirements*, Paragraph D *Standard Rental Agreement/Delivery Ticket*).

C. Equipment Operators: Only employees of the Authorized User who are qualified and trained in the safe operation of the Heavy Equipment shall be permitted to operate the Heavy Equipment. The Authorized User shall provide and pay for all workers' compensation insurance and pay all payroll taxes required by law and applying to such operators.

D. Permits: The Authorized User shall be solely responsible for obtaining, maintaining and paying costs of any permits or licenses needed for the use or operation of the Heavy Equipment. This includes any OSHA required certifications or licenses associated with the Rental. The Contractor makes no representation regarding the requirement of permits for the use or operation of the Heavy Equipment.

E. Care and Operation: The Heavy Equipment may only be used and operated in a manner consistent with the OEM's operating manual. Its use must comply with all laws, ordinances, and regulations relating to the possession, use, or maintenance of the Heavy Equipment, including registration and/or licensing requirements. The Authorized User shall not remove, alter, disfigure or cover up any numbering, lettering, or insignia displayed upon the Heavy Equipment;

F. Consumables: In accordance with Section III. 3 *Rental Service Requirements*, Paragraph F *Consumables*, the Authorized User is responsible for the cost of all Consumables used during the Rental Period, and with replenishing them as needed during the Rental Period using the proper procedures specified in the OEM's operating manual, or as directed by the Contractor. Upon return of the Heavy Equipment to the Contractor, if the

fuel tank is not at full capacity it shall be refilled at the Authorized User's expense. The Authorized User reserves the right to utilize fuel pumps other than those owned by the Contractor.

G. Maintenance: In accordance with Section III. 3 *Rental Service Requirements*, Paragraph G *Maintenance*, the Authorized User shall grant access to the Heavy Equipment to the Contractor during the Rental Period for the purposes of inspecting and servicing the unit at mutually agreed-upon intervals. If previously agreed-upon, the Authorized User may perform routine maintenance on behalf of the Contractor.

H. Routine Service. In accordance with Section III. 3 *Rental Service Requirements*, Paragraph H *Routine Service*, the Authorized User shall perform daily inspections and routine service (e.g., grease components prior to use, add diesel exhaust fluid, change oil) required to keep the Heavy Equipment in good repair and running order. Exterior washing, cleaning and decontamination (e.g., if used in a hazardous waste operation) of the Heavy Equipment, prior to return, shall be the responsibility of the Authorized User.

I. Minor Repair: In accordance with Section III. 3 *Rental Service Requirements*, Paragraph I *Repair*, Subparagraph 1, the Authorized User may perform minor repairs, (i.e., repairs that do not require special training and are completed in less than one (1) hour), with prior authorization from the Contractor.

J. Equipment Damage or Loss after Delivery: The Authorized User assumes all risks of loss or physical damage to the Heavy Equipment caused by theft, accident or vandalism during the Rental Period, and agrees to return it to the Contractor in the condition specified in the mutually agreed-upon equipment condition report, with the exception of normal wear and tear as defined by the OEM. The Authorized User is responsible for tire damage or excessive wear or damage to the machine (e.g., broken glass, lights or gauges and bent sheet metal, fenders, handrails). Determination of which party is at fault for the damage or loss shall be mutually agreed between the parties, and the burden of proof is with the Contractor.

1. In the event of an accident and/or vandalism, the Authorized User shall inspect and appraise damage, or arrange for such services, prior to any repairs. The Authorized User shall be responsible for filing all reports that are necessary and forwarding the reports to the Contractor.

2. The Authorized User can either request that the Contractor make any repairs or, with mutual agreement of the Contractor, elect to use one of its own in-house repair shops.

3. If the Heavy Equipment is deemed a total loss or the cost of the necessary repairs exceed the Heavy Equipment value, the Contractor shall be reimbursed for the residual value of the Heavy Equipment's value based either on the average of the wholesale and retail price as listed in the current monthly edition of a mutually agreed-upon industry used equipment guide, or other method that is mutually-agreed upon by the Contractor and the Authorized User. This payment shall serve as full satisfaction of any and all Authorized User liabilities under the Contract. The Authorized User's liability to pay the Daily, Weekly or Monthly Rental Price ceases at the same time that the Heavy Equipment becomes unusable. The Authorized User shall pay the Contractor the accrued Rental cost, on a prorated basis, for the Rental Period during which the accident or vandalism occurred. Upon payment of residual value, the Contractor shall provide the Authorized User with the title or certificate of ownership and transfer ownership of said Heavy Equipment to the Authorized User. The Authorized User then has the right to salvage or otherwise dispose of such Heavy Equipment.

4. In the event of theft, if the Heavy Equipment is not recovered within thirty (30) days, the Heavy Equipment is to be declared a total loss. The Contractor shall be reimbursed for the residual value of the Heavy Equipment based on the average of the wholesale and retail price as listed in the current monthly edition of a mutually agreed-upon industry used equipment guide. This payment shall serve as full satisfaction of any and all Authorized User liabilities under the Contract. The Authorized User's liability to pay the Daily, Weekly or Monthly Rental Price ceases at the same time that notification of the theft is reported to the Contractor. The Authorized User shall pay the Contractor the accrued Rental cost, on a prorated basis, for the Rental Period during which the theft occurred. Upon payment of residual value, the Contractor shall provide the Authorized User with the title or certificate of ownership and transfer ownership of said Heavy Equipment to the Authorized User. The Authorized User then retains ownership of the Heavy Equipment if it is later recovered.

K. Insurance and Insurance Certificate: Insurance that covers the Heavy Equipment rented by the Authorized User, effective for the full Rental Period, shall be provided as set forth below.

1. State Agencies. At the start of the Contract term, and upon renewal of the insurance policy, the OGS Bureau of Risk & Insurance Management shall issue a Certificate of Insurance that specifies the blanket physical damage coverage provided for all Rentals, other than vehicles, by Authorized Users that are State Agencies covered by the State's self-retention policy. Such coverage shall be for physical damage only, with a one million ($1,000,000) limit per item, and a five million ($5,000,000) general aggregate for the year.

   A separate Certificate of Insurance shall be issued to the Contractor, prior to commencement of the Rental Period, by the OGS Bureau of Risk & Insurance Management for each Rental of Heavy Equipment that is a vehicle (i.e., has a license plate affixed to it and may be operated on a roadway). Such coverage shall be for physical damage only, and have a $400,000 limit per loss.

2. Other Entities. All Authorized Users that are not covered by the State's self-retention policy shall obtain insurance for any Heavy Equipment Rental in an amount satisfactory to the Contractor. A copy of the insurance certificate, or other satisfactory proof of insurance, shall be provided to the Contractor prior to the commencement of the Rental Period. At the Authorized User's discretion, insurance coverage for the Rental Period may be obtained from the Contractor.

L. Option to Renew: If the Authorized User is not in material default upon the expiration of the Rental Period, the Authorized User shall be given priority to renew or extend the Rental Period, if the Heavy Equipment has not been previously scheduled for Rental by a third party.

M. Moving Equipment: The Authorized User shall have the right to move Heavy Equipment at their own expense to locations different from the Delivery location, provided that the new location(s) is located in NYS. The Authorized User must have prior authorization from the Contractor to move the Heavy Equipment outside NYS boundaries. If moving the Heavy Equipment results in a different pickup location than previously agreed-upon, the only additional charges allowed to the Contractor shall be for additional mileage, if any.

N. Subletting and Assignment: The Authorized User shall not be entitled to sublet or assign any of its rights under this Contract or to any of the Heavy Equipment rented to any entity that is not an Authorized User. The Authorized User may sublet the Heavy Equipment to another Authorized User only with the prior written consent of the Contractor.

PURCHASE ORDERS AND INVOICING

All Purchase Orders and invoices shall include the following information.

A. PURCHASE ORDERS

Authorized User Purchase Orders are to include the following information:

1. Contract number;
2. Contractor business name;
3. Rental Quote Request number, if applicable;
4. Make, Model and description of the Heavy Equipment to be provided for Rental;
5. Description of attachments to be included with the Heavy Equipment, if applicable;
6. Rental Period;
7. Delivery location; and
8. NYS Contract Price for the Rental.

It is strongly advised that all contract users FOLLOW-UP WITH THE CONTRACTOR after submitting their purchase order, whether it was submitted by mail, electronically or by fax. This is to insure that the contractor received and placed your order.

B. INVOICES

Authorized Users are instructed not to process invoices that do not include the required information set forth below. Invoices must be detailed and include in the body of the invoice or an attachment to the invoice **all** of the following items. Failure to comply may result in lengthy payment delays.

Invoices shall include, at a minimum, the following information:

1. Contract number;
2. Contractor business name;
3. Rental Quote Request Number, if applicable;
4. Make, Model, description and Rental Price of the Heavy Equipment provided for Rental;
5. Description and Rental Price of attachments included with the Heavy Equipment, if applicable;
6. Price of Consumables and provided with the Rental
7. Rental Period and location;
8. Delivery Charge;
9. Repair costs, if applicable; and
10. Total NYS Contract Price for the Rental.

CONTRACT PAYMENTS

Payments cannot be processed until the Rental Period has ended and an invoice has been received by the Authorized User. Payment shall be made by the Authorized User and shall be based on any invoice used in the Contractor's normal course of business. However, such invoice must contain all requirements in Section II.11 *Purchase Orders and Invoicing*. See also Appendix B §48 *Contract Invoicing*. Upon mutual agreement between the Contractor and Authorized User, the Contractor may issue one (1) invoice that covers multiple Rentals that have been completed during the applicable month.

"OGS OR LESS" GUIDELINES APPLY TO THIS CONTRACT

Rental of the Product Line included in this Contract are subject to the "OGS or Less" provisions of New York State Finance Law § 163(3)(a)(v). This means that State Agencies can acquire Heavy Equipment Rental from sources other than the Contractor provided that such Heavy Equipment Rental is substantially similar in form, function or utility to the Heavy Equipment Rental herein and are:

1. Lower in price

   -And/Or-

2. Available under terms which are more economically efficient to the State agency (e.g. delivery terms, warranty terms, etc.).

State agencies are reminded that they must provide the Contractor an opportunity to match the non-contract savings at least two (2) business days prior to Rental. In addition, Rentals made under "OGS or Less" flexibility must meet all applicable 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.

NON-STATE AGENCIES PARTICIPATION

New York State political subdivisions and others authorized by New York State law may participate in centralized contracts. These include, but are not limited to local governments, public authorities, public school and fire districts, public and nonprofit

libraries, and certain other nonpublic/nonprofit organizations. See Appendix B §26 *Participation in Centralized Contracts*. For purchase orders issued by the Port Authority of New York and New Jersey (or any other authorized entity that may have Delivery locations adjacent to New York State), the terms of Section III.1.1 *Delivery Charge* 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. Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to Procurement Services Customer Services at 518-474-6717.

POOR PERFORMANCE

Authorized Users should notify Procurement Services Customer Services promptly if the Contractor fails to meet the requirements of the Contract. Performance which does not comply with requirements or is otherwise unsatisfactory to the Authorized User should also be reported to Customer Services:

Office of General Services
Procurement Services
Customer Services
38th Floor Corning Tower
Empire State Plaza
Albany, NY 12242

Tel: 518-474-6717
Fax: 518-474-2437
Email: customer.services@ogs.ny.gov

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