



Contract Award Notification (Revised)

Title	:	Group 38604 – Traffic Paint: Waterborne (Lead Free) Acrylic, Two-Part Epoxy & Supplies (Statewide) Classification Code(s): 46
Award Number	:	<u>22360-ES, SW</u>
Contract Period	:	May 18, 2012 through May 17, 2017
Bid Opening Date	:	January 5, 2012
Date of Issue	:	June 23, 2012 (REVISED June 3, 2016)
Specification Reference	:	As Incorporated In The Invitation for Bids
Contractor Information	:	Appears on Pages 2 and 24 of this Award

Address Inquiries To:

State Agencies & Vendors	Political Subdivisions & Others
Name : Adam Groesbeck	Procurement Services Customer Services
Title : Contract Management Specialist 1	Phone : 518-474-6717
Phone : 518-485-1621	Fax : 518-474-2437
E-mail : adam.groesbeck@ogs.ny.gov	E-mail : customer.services@ogs.ny.gov

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

Description

The award is for traffic zone paint and epoxy for purchase by the State, authorized agencies and political subdivisions. They are used to delineate the highway edges and traffic lanes. Traffic markings (stripes) are regarded a one of the most cost-effective methods of controlling traffic flow. They increase driver awareness and help insure the safety of the driving public.

PR # 22360

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CONTRACT #	CONTRACTOR & ADDRESS	TELEPHONE NUMBERS & CONTACT INFORMATION	FED.IDENT. # / NYS VENDOR ID #
PC65790	ENNIS PAINT INC. 1509 South Kaufman Street Ennis, Texas 75119	(800) 331-8118 Toll Free (336) 308-3970 Victoria Stolz Vstolz@ennisflint.com www.ennisflintamericas.com	752657523 / 1100009671
PC65791	POTTERS INDUSTRIES, LLC 300 Lindenwood Drive Malvern, Pennsylvania 19355	(800) 552-3237 - ext. 4714 Toll Free (610) 651-4714 Yvonne Harris (610) 408-9723 Fax yvonne.harris@pottersbeads.com www.pottersbeads.com	221933307 / 1000016855

Contractor accepts N.Y.S. Procurement Card for purchases up to \$15,000.00. Contract users must advise the contractor that the card will be used at the time an order is placed. Contractor also offers Electronic Access Ordering (EDI).

Cash Discount, If Shown, Should be Given Special Attention.
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 DEPARTMENT OF GENERAL SERVICES, PROCUREMENT SERVICES (hereinafter referred to as "OGS Procurement Services") PROMPTLY IF THE CONTRACTOR FAILS TO MEET DELIVERY OR OTHER TERMS OF THIS CONTRACT. PRODUCTS OR SERVICES WHICH DO NOT COMPLY WITH THE SPECIFICATIONS OR ARE OTHERWISE UNSATISFACTORY TO THE AGENCY SHOULD ALSO BE REPORTED TO OGS PROCUREMENT SERVICES.

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:

OGS Procurement Services supports and encourages the purchase of recycled, remanufactured, energy efficient and "energy star" products. This award has been designated "ES" - Environmentally Sensitive as having products which are formulated with Federal E.P.A. and State Department of Environmental Conservation guidance for safe usage on State Roads and Highways. It is also designated as Solid Waste Impact Award "SW" as the award impacts solid waste management through the requirement that the contractor maintains ownership of all 55 gallon Drums and 275 gallon Totes, whereby these containers are returned to the contract for future re-use, and thereby encourages recycling and reduces the impact of the contract local landfills.

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

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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).

SCOPE:

OGS Procurement Services is awarding contracts to purchase traffic zone paint and epoxy by State, authorized agencies and political subdivisions. They are used to delineate the highway edges and traffic lanes. Traffic markings (stripes) are regarded a one of the most cost-effective methods of controlling traffic flow. The award also contains road paint for use in the designation of Handicapped space, EZ-Pass Lanes, and Bike Paths, as well as a drying agent compound for use in accelerating the drying process so as to reduce wet paint tracking into driving lanes. These products increase driver awareness and help insure the safety of the driving public.

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.

DEBRIEFING:

Contractors and bidders are accorded fair and equal treatment with respect to the opportunity for debriefing. OGS shall, upon request, provide a debriefing to any bidder or awarded contractor that responded to the IFB regarding the reason that the proposal or bid submitted by the unsuccessful bidder was not selected for a contract award. The post award debriefing should be requested by the bidder or awarded contractor within thirty days of posting of the contract award on the OGS website.

DISPUTE RESOLUTION POLICY:

It is the policy of New York State Procurement Services, a division of the Office of General Services, to provide vendors with an opportunity to administratively resolve disputes related to Procurement Services bid solicitations, contract awards or contract administration. Interested parties are encouraged, but not required, to seek resolution of disputes through consultation with Procurement Services staff through the Informal Dispute Resolution Process described herein, prior to filing a Formal Dispute. All Informal and Formal Disputes will be accorded full, impartial and timely consideration.

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 OGS Procurement Services prior to effectuation.

ESTIMATED QUANTITIES:

Any projections of item purchases listed within this Award are estimated only.

No guaranty of any quantity(s) is implied or given.

See "Estimated/Specific Quantity Contracts" and "Participation in Centralized Contracts" on pages 8 and 9 of Appendix B, OGS General Specifications as included with the IFB.

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PREFERRED SOURCE PRODUCTS AND SERVICES:

New York State users should note some products in this contract may be available from a preferred source vendor. 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 and services available from preferred sources which meet your form, function and utility.

Contractors are required to include this notice in all price lists and contract updates.

OVERLAPPING CONTRACT ITEMS:

Products/services available in this contract may also be available from other New York State contracts. Agencies should select the most cost effective procurement alternative that meets their program requirements and maintain a procurement record documenting the basis for the selection.

CONTRACT BILLINGS AND PAYMENTS:

a. **Billings.** Contractor and the dealers/distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Billing invoices submitted to an Authorized User must contain all information required by the Contract and the State Comptroller or other appropriate fiscal officer. Submission of an invoice and payment thereof shall not preclude the Commissioner from requesting reimbursement or demanding a price adjustment in any case where the Product delivered is found to deviate from the terms and conditions of the Contract or where the billing was inaccurate.

Contractor shall provide, upon request of the Commissioner, any and all information necessary to verify the accuracy of the billings. Such information shall be provided in the format requested by the Commissioner and in a media commercially available from the Contractor. The Commissioner may direct the Contractor to provide the information to the State Comptroller or to any Authorized User of the Contract.

b. **Payment of Contract purchases made by an Authorized User when the State Comptroller is responsible for issuing such payment.** The Authorized User and Contractor agree that payments for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payments shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller website at www.osc.state.ny.us, by e-mail at epunit@osc.state.ny.us, or by telephone at 518-486-1255. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract that are payable by the State Comptroller if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

c. **Payment of Contract purchases made by an Authorized User when the State Comptroller is not responsible for issuing such payment.** The Authorized User and Contractor agree that payments for such Contract purchases shall be billed directly by Contractor on invoices/vouchers, together with complete and accurate supporting documentation as required by the Authorized User. Such payments shall be as mandated by the appropriate governing law from the receipt of a proper invoice. Such Authorized User and Contractor are strongly encouraged to establish electronic payments.

NEW YORK STATE PROCUREMENT CARD

Potters Industries has indicated that they will accept the NYS Purchasing Card for orders not to exceed \$15,000, and this information is contained in the Contractor Detail on page 2. **Contract users are to advise the contractor that the card will be used at the time an order is placed.**

No additional processing fees shall be applied to any procurement card transaction.

No extraordinary paperwork is to be required of the contract user.

See "Procurement Card" in Appendix B, OGS General Specifications.

NOTE TO AGENCY:

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

NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT BUSINESS ENTITY:

Contractors are encouraged to maintain an up-to-date Questionnaire during the life of the contract and are also required to ensure this Questionnaire reflects any substantive issues that may have occurred from the time the Contract was initially awarded.

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CONTRACT USERS NOTE:

The use of proprietary devices *specified by a highway agency* for use on Federal-aid projects must meet one of the following criteria:

- (a.) It must be supplied through competitive bidding with equally suitable unpatented items;
- (b.) the highway agency must certify that it is essential for synchronization with existing facilities or that no equally suitable alternative exists; or
- (c.) it must be used for research or for a distinctive type of construction on relatively short sections of road for experimental purposes.

The regulations concerning proprietary products are contained in Title 23, Code of Federal Regulations, Section 635.411 and are available upon request from the Contract Manager Specialist of record for this procurement.

PRICE:

General - Price includes all customs duties and charges and is net, F.O.B. destination any point within the States of New York, as designated by the ordering agency including dock delivery and tailgating of load. **Additional fees may be charged** when delivery to point of use **is not possible** via dock, any other door, stairway or elevator freight services when specialized service is requested **in writing** by the purchaser. Authorized user will not be charged for delivery to building location since price is FOB destination; authorized user must be informed of the additional cost prior to delivery and agree to the additional charge in writing. Such costs shall be prepaid and added to the invoice.

NOTE: If it is determined the contractor is charging excessive amounts for specialized delivery services, the State may seek reimbursement for such amounts, may remove the contractor from the list of eligible bidders, and may cancel the contract.

Both 55-gallon and 275-gallon capacity containers remain the property of the contractor and are to be removed at no additional charge. Upon notification, contractor shall be responsible for picking up and removing at their own expense, all drums actually furnished by the contractor during the contract period. See the "Packaging" clause on page 14 for additional information.

Contract prices for all LOTS shall be firm except that price adjustments will be permitted in accordance with the "Price Adjustments" provisions as shown beginning below.

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

Minimum Order - The minimum orders for these products are as follows:

LOT #	Minimum Order Amount	Note
I	3,000 Gallons	May be in any combination of items, sizes or containers for a single location
II	Six (6) 55-Gallon Drums	May be in any combination of items for a single location
III-VI	Two (2) 55-Gallon Drums Five (5) 5-Gallon Pails	Not assortable within or between lots.
VII	2,000 pounds net weight	Packaged in 50 pound bags. Orders must be made in increments of 50 pounds over the minimum.

Both Contractors have stated that they will 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.

Cash Discounts – Volume Discounts – No additional discounts have been offered by the contractors.

Price Adjustments - Prices are firm through the first twelve- month period after the contract award. The price of the contract award line items are then subject to an increase or decrease, commencing with the first business day of the month following the one year anniversary of the issuance of initial contract awards and every four (4) months thereafter.

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PRICE: (Cont'd)

The price adjustment formula will vary by LOT and will be applied to 85% of the original line item contract price. It will be based on the fluctuation of one or more of the designated indices. The calculated rate will then be applied to the originally awarded line item prices in each lot to achieve the final adjusted price.

For Lots I through VI, 90% of the price adjustment will be commensurate with any increase or decrease in The United States Department of Labor Producer Price Index (PPI) for the classification covering Paint and Coating Manufacturing: Special Purpose Coatings, including Marine, Industrial, and Maintenance Coatings, etc. Series ID# PCU 3255103255107, while the remaining 10% of the adjustment will be based on the corresponding PPI for General Freight Trucking -Long Distance LTL - Primary Services, PCU484122484122P.

For Lot VII, 45% of the price adjustment will be commensurate with any increase or decrease in The United States Department of Labor Producer Price Index (PPI) Commodity Data for Chemicals and Allied Products, other inorganic chemicals, Series ID: WPU06130283, not seasonally adjusted; 25% of the price adjustment will be according to activity reported by the Federal Natural Gas Futures analysis based on the spot pricing supply through the Henry Hub as calculated & updated by the U. S. Department of Energy's Energy Information Administration for the average daily settlements of the most recently reported completed week. 20% of the price adjustment will be adjusted according to activity reported by the US Department of Labor, Producer Price Index (PPI) Industry Data for Glass product mfg. made of purchased glass, Series ID : PCU327215327215P, not seasonally adjusted, while the remaining 10% of the adjustment will be based on the corresponding PPI for General Freight Trucking -Long Distance LTL - Primary Services, PCU484122484122P.

The base indices, recorded prior to the bid publication will remain in place and constant for the duration of the contract including any extensions or renewals. Should an index data source be removed from publication or becomes otherwise unavailable, Procurement Services will select an appropriate replacement index. In such instance the base would change to that of the new referenced index. The adjustment indices will be recorded 7-10 days prior to the date of adjustment, enabling the contract administrator to make necessary calculations and prepare all necessary information for timely distribution to the contractors and contract users.

Whereas United States Department of Labor Producer Price Indices (PPI) & Department of Energy's spot pricing are referenced, the value will be the figure referenced on the day of record as most recently published for the current year, whether or not indicated as preliminary on the day of record. Should the published figure in fact be preliminary, it will not be updated should a different figure replace it in the Bureau's permanent record. Additional information on the Producer Price Index may be obtained at the U. S. Department of Labor website at <http://data.bls.gov>. Information concerning the Energy Information Administration spot price is found on their web site at <http://www.eia.gov/naturalgas/weekly>.

The basic price adjustment calculation process uses a base value of 100. The Adjustable Amount is 85, and the Addend is 15. All calculations will be rounded to 3 decimal places.

The representative example below details how the formula works:

1. Calculate **Individual Adjustment Factors**:

As this adjustment process is using targeted factors related to researched percentages of each item classification it is necessary to take the adjustable amount and segment it further so as to allow the individual adjustment multipliers to be applied to the proper percentage. This is done by taking the Adjustable Amount (85) and multiplying it by each percentage rate:

$$\text{Adjustable Amount (85)} \times 0.90 = \text{Individual Adjustment Factor for First Index} - 76.50$$

$$\text{Adjustable Amount (85)} \times 0.10 = \text{Individual Adjustment Factor for Freight} - 8.50$$

2. Calculate adjustment **Multipliers**:

Current Index Value (taken within 7-10 working days prior to date of adjustment) ÷ Base Index = a Multiplier

In the event index movement is indicative of a price reduction, the actual multiplier will equal:

$$[1 - (\text{The Current Index Value} \div \text{Base Index})]$$

3. Calculate each **Individual Adjustment Values**:

$$\text{Individual Adjustment Factor} \times \text{Multiplier} = \text{Individual Adjustment Value}$$

4. Calculate **Final Adjustment Values** by adding together the Individual Adjustment Values

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PRICE: (Cont'd)

5. Calculate the **Total Adjusted Value**:

Final Adjustment Value + Addend (15) = **Total Adjusted Value**

6. Calculate **Net Adjustment Percentage**:

Total Adjusted Value ÷ Base Value (100) = Net Adjustment Percentage per classification

7. If the **Net Adjustment Percentage indicates an index change greater than 2.0%**, the originally awarded Line Item Prices for each lot would be adjusted up or down by the **Net Adjustment Percentage**.

There will not be any price adjustments for total net percentage changes of two percent (2%) or less.

The example is based on the above breakdown for Lots I through VI. As Lot VII has a more detailed breakdown using additional indices, the adjustment process would involve additional calculations within these same steps to include those figures for that lot.

If warranted, a Purchasing Memorandum will then be issued by Procurement Services to reflect the increase or decrease.

The following benchmark values from the US Department of Labor Producer Price Indices, and US Department of Energy's Natural Gas Analysis reports will be used in determining if price adjustments will apply to contracts awarded under this procurement:

The Base Index to be used for **Paint and Coating Manufacturing: Special Purpose Coatings**, including Marine, Industrial, and Maintenance Coatings, etc. - Series ID# PCU 3255103255107 is set as **319.9**.

The Base Index to be used for **Chemicals and Allied Products**, other inorganic chemicals - Series ID# Series ID: WPU06130283 is set as **189.8**.

The Base Index to be used for **Natural Gas Futures based on supply through the Henry Hub** - Federal Natural Gas Futures analysis of spot pricing is set as **3.34**.

The Base Index to be used for **Glass Product Manufacturing**, primary products made of purchased glass Series ID# PCU327215327215P is set as **143.1**.

The Base Index to be used for **General Freight Trucking -Long Distance LTL** - Primary Services - Series ID# PCU484122484122P - is set as **237.9**.

The adjusted price will be valid and applied to all orders submitted to a contractor for **normal or expedited delivery within a given adjustment period**. Orders received by mail after the end of an adjustment period shall be honored as if received in the previous period provided the purchase order and postmark show the order was mailed ahead of the deadline. **Should normal delivery for the order extend into a new adjustment period, the ordered price is to be honored and billed by the contractor. Should a buyer specify a required delivery date extending into a different adjustment period, the price will be that of the new adjustment period.** The contractor shall notify the buyer upon receipt of the order that the pricing would be subject to adjustment and will advise the buyer of the adjusted pricing prior to the shipment of the order. Any necessary credits or adjustments are to be made using the actual invoice price submitted for payment. It is the contractor's responsibility to promptly bring any pricing concerns to the attention of the buyer and the contract administrator.

Best Pricing Offer Price decreases shall take effect automatically during the Contract Term and apply to orders submitted subsequent to the effective dates of applicable price decreases as follows:

1. Commercial Price List reductions: Where the States' Net Prices are based on a discount from the Contractor's list prices and the Contractor lowers its pricing to its customers or to similarly situated government customers during the contract term;
2. Special Offers/ Promotions- General: Where the contractor generally offers more advantageous special price promotions, or special discount pricing to customers during the contract term, and the maximum price or discount associated with such offer or promotion is better than the discount or price otherwise available under this contract, such better price or discount shall apply for similar quantity transaction for the life of the general offer or promotion.
3. Special Offers/ Promotions-Specific: Contractor may offer an Authorized User competitive pricing which is lower than the Net States' Price set forth herein at any time during the contract period and such lower pricing shall not be applied as a global price reduction under the contract pursuant to the foregoing paragraph.

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PRICE: (Continued)

Lower Pricing - The State reserves the right to negotiate lower pricing, or to advertise for bids, whichever is in the State's best interest as determined by the Commissioner, in the event of a significant decrease in market price of any product listed. In addition, if the contractor's normal pricing to the public or to the trade in general is less than the net/contract pricing with the application of a contract discount, etc., then the normal pricing to the public or to the trade in general shall also be granted to contract participants. Any general price reductions passed on to other customers occasioned because of a competitive "softening" of the market are to be correspondingly offered at the same ratio to all affected States. Prices may be lowered at any time. Failure on the part of the contractor(s) to promptly accord such industry-wide price reductions on the contracts may constitute a breach and the contracts with that vendor may be canceled.

Government Mandated Program Adjustment - Product shall conform to all current Federal, State and Local Laws including but not limited to the United States Department of Conservation's Environmental Protection Act's Emission Regulations in effect at the time of delivery.

An adjustment in product and/or price may be permitted if a government mandated program, such as a new Federal Highway Administration or Federal Environmental Protection Agency Specification Standards, MUTCD regulations or pertinent New York State Legislative measures or Executive Orders were to take effect and suitable documentation is furnished to the State. The State would determine if the requested change is verifiable and is reasonable. Replacement product would be subject to NYS Department of Transportation testing and approval. A price adjustment may be permitted for only a limited time since such an adjustment would eventually be reflected in the PPI.

NYS DEPARTMENT OF TRANSPORTATION ANNUAL PROJECTIONS:

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

Annually through the term of the contract, the NYS Department of Transportation will develop a schedule containing a projection estimating the paint quantity and delivery breakdown of traffic paint for use by the department for the upcoming paint season for Lots I and II. The schedule will be developed in recognition of NYS-DOT's overall program responsibilities coupled with the application rate to be expected from available manpower and equipment resources. The subject schedule will reflect approximate delivery requirements which will allow effective uninterrupted utilization of these resources during the forthcoming marking season. Note that the schedule is an estimate, and not a guarantee of actual quantity, need or order. See the "ESTIMATED QUANTITIES" clause on page 3, for additional clarification.

The schedule will be distributed by the OGS Contract Management Specialist as a Purchasing Memorandum for use by the contractors as soon as available after the start of the calendar year for that years painting season.

IRAN DIVESTMENT ACT:

As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a new provision has been added to the State Finance Law (SFL), § 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) will be developing a list (prohibited entities list) of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list is expected to be issued no later than 120 days after the Act's effective date, at which time it will be posted on the OGS web site.

By entering into this Contract, Contractor (or any assignee) certifies that once the prohibited entities list is posted on the OGS website, it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list.

Additionally, Contractor agrees that after the list is posted on the OGS website, should it seek to renew the Contract, it will be required to certify at the time the Contract is renewed or assigned that it or its assignee is not included on the prohibited entities list.

During the term of the Contract, should OGS receive information that a person is in violation of the above-referenced certification, OGS will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the

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determination of such violation, then OGS shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

OGS reserves the right to reject any request for assignment for an entity that appears on the prohibited entities list prior to the award of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the prohibited entities list after contract award.

DELIVERY:

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

Section 45 (Product Delivery) of Appendix B is modified as follows: Unless otherwise stated on purchase order, delivery is required within 30 calendar days after contractor's receipt of purchase order. **Orders may not** without prior written consent of the contractor **demand** delivery prior to 30 days after contractor's receipt of said order.

Contract users may request scheduled deferred deliveries. With the exception of NYS Department of Transportation orders, all schedules requiring delivery to be delayed beyond 90 days after contractor's receipt of order must have the prior approval of the related contractor and with such allowance noted on the given purchase order. **All deferred shipping may be subject to a price adjustment if the requested shipment overlaps scheduled price adjustment periods. See page 7 for more information.**

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

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 entity and, if applicable, from OGS Procurement Services. (SEE "PURCHASE ORDERS AND INVOICING" as found on page 10).

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. Notification does not negate the contractor's responsibility for shipment of product as soon as possible, nor the conditions noted under the Liquidated Damages clause. 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 entities' specified contact person.

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

Actual physical arrival and delivery of material must be scheduled by the carrier, contacting and coordinating with the recipient no more than 48 hours prior to a trucks arrival at the delivery site.

Delivery will be scheduled no earlier than 7:00 a.m. or later than 3:00 p.m. and will have a 2 hour window of opportunity **within** those parameters, Tuesday through Thursday, excluding Holidays, **or as otherwise agreed to as mutually acceptable between the carrier and recipient.** Delivery will only be accepted within the time period scheduled. At the discretion of the Recipient, shipments arriving outside of the scheduled time frame may be expected to reschedule the shipment (if late) or return at the originally scheduled time (if early). Any and all changes required as a result of such arrivals are at the carrier's expense.

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

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.

LIQUIDATED DAMAGES:

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

- Two-hundred fifty dollars (\$250.00) dollars per business day, not as a penalty but as liquidated damages, for each color of paint, to compensate for delay and other losses, detriments and inconveniences attendant upon such delay from the grace period, commencing from the time delivery was due under the contract. Saturdays, Sundays, and State legal-holidays will be excluded from the computations for the assessment of Liquidated Damages.
- A grace period of ten (10) business days commencing on and including the contract date for delivery, shall be extended to the vendor prior to the assessment of such liquidated damages. Assessment of liquidated damages will then commence on the forty-fifth (45th) calendar day after placement of the purchase order by mail, or 41 calendar days after placement electronically. Notice is hereby given to the vendor that despite the extensions of the grace period herein specified, time shall be and is of the essence in regard to the delivery of these products to the using agency.
- Whereas shipments of paint may not commence at the beginning of an annual painting season until the season's initial manufacturing run has been tested and independently certified as meeting the required specifications, such testing and any delays caused as a result of the testing process negate the liquidated damages clause. Once initial shipments have been approved for release, the terms of this clause become active. However, should any such initial delays be caused by the failure of the contractor to deliver the required sample requirements in a timely manner, or of the product to meet the stated specifications and requirements, the Contractor may be held liable for Liquidated Damages as stated here in.

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

PURCHASE ORDERS AND INVOICING:

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

Purchase Orders –A purchase order shall be deemed to be received by the contractor four (4) calendar days after placement of order by mail, or the same as day sent if submitted by electronic transmission. All purchase orders shall be confirmed as received by the contractor. See the “DELIVERY” clause beginning on page 9 for more information. Purchase Orders should include the detailed information stated above and any delivery requirements, personnel contact numbers or additional information a contractor and shipping carrier may need in to properly process and deliver the product in a timely manner. NYS agencies and/or political subdivisions whose receiving facilities cannot accommodate entrance of an over the road trailer with a height of 13'-6" must specify on their purchase order - "Maximum trailer height for delivery to this location is ____." (insert height in this space).

(continued)

Purchase orders where deferred shipments are requested shall clearly detail the requirement dates. Contractor must promptly inform the buyer of any deferred shipment in which the requested delivery date extends beyond a current pricing period into a new scheduled price adjustment period, so that proper pricing will be applied at the time of invoicing. For non-NYSDOT deferred orders, where the requested shipping dates are in excess of 90 days, a notation of pre-approval by the contractor shall be clearly noted, including date, time, and name of authorizing party. If approval was made in writing, a copy of the memo should be attached.

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.

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 the termination date appearing on this Contract Award Notification has been adjusted forward unilaterally by the State for these resulting contracts by two calendar per the terms of the Invitation for Bids.

Contract Renewal - If mutually agreed between Procurement Services 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 Extensions - 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.

Cancellation For Convenience By The State -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 Cancellation - If a contract is cancelled, the State reserves the right to make award on another compliant bid for the original bid letting, but is not obligated to do so; the State is not obligated to hold another bid letting.

EXTENSION OF USE:

Any contract resulting from this bid solicitation 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.

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 their original contract.

(continued)

NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS:

New York State political subdivisions and others authorized by New York State law may participate in 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 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 (<http://www.ogs.state.ny.us/purchase/snt/othersuse.asp>). Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to OGS Procurement Services' Customer Services at 518-474-6717.

RESERVATION:

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

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.

OFFICE OF GENERAL SERVICES, SAMPLING AND TESTING:

The New York State Office of General Services, Procurement Services or the New York State Department of Transportation may monitor the contractor's deliveries to State Agencies by random selection of field samples for testing by an independent laboratory

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 Clause) 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, Contract Management Specialist, 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 Procurement Services, 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.

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 and to proceed with an award to the next lowest bidder in line.

RECALLS:

The contractor must immediately notify OGS Procurement Services of any recalls pertaining to product on contract.

(continued)

PERFORMANCE REQUIREMENTS:

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

Product Returns, Problem Product - Products returned because of quality problems, duplicated shipments, outdated product, etc., shall be picked up by the contractor at the contractor's expense 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 at the agencies' expense. Product must be in resalable condition (original container, unused). There shall be no restocking fee if returned products are resalable.

Report of Contract Purchases - Contractor shall furnish a report containing all both State Agency and authorized non-state agency contract purchases by the fifteenth of the month following the end of each six-month period. The report shall be entered directly into the NYS Statewide Financial System Portal, subsequent to the activation of the SFS. Contractors will follow the reporting format Established within the SFS Vendor Portal. Should the SFS not be active by the first report date, an itemized report of all orders shipped and invoiced, complete with Requisition number, ship dates, unit and extended price, amount sold, and shipped to location, shall be forwarded electronically in Excel Format to the Contract Administrator, until such time as the SFS is on line. Subcontractor sales are not permitted under this award.

Technical Assistance - Generalized instruction and technical assistance for the offered products in the normal course of doing business, or remotely via a customer or technical service website or telephone hotline is considered a part of the price of the product, and is to be available on an as needed basis.

NOTICE TO STATE AGENCIES & POLITICAL SUBDIVISIONS:

It shall be the responsibility of the user prior to use of the paint to determine whether or not its use is prohibited by any local Pollution Ordinances, or any other Local, State or Federal Regulations.

"OGS OR LESS" GUIDELINES APPLY TO THIS CONTRACT:

Purchases of the products included in this 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 Guidelines section "OGS or Less Purchases" for complete procedural and reporting requirements.
<http://www.ogs.state.ny.us/procurecounc/pdfdoc/guidelines.pdf>

LABELING, PACKAGING AND QUALITY ASSURANCE:

The contractor shall be responsible for complying with all of the specifications pertaining to Labeling, Packaging and Quality Assurance as found in herein and in the General Information Section & Appendices X & Y of The Invitation for Bids.

QUALITY ASSURANCE PROVISIONS:

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

(continued)

PACKAGING:

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

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

The paint shall be supplied in the following types of containers as described below and as directed in the line item award section: 275-gallon high density polyethylene IBC totes, 55-gallon removable head low carbon steel drums or 5-gallon lidded high density polyethylene pails.

All 55-gallon drums and 275-pound IBC totes remain the property of the contractor and shall be promptly recovered by the contractor when requested by the using agency. The 5-gallon pails shall be the property of the buyer and disposed of by the using agency in accordance with existing environmentally proper procedures.

A. For LOT I: Clean and sound, high-density polyethylene IBC totes. The container sizes shall be as required in the Invitation for Bids, and shall be capable of holding 275 liquid gallons.

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

B. LOTS I through VI: New, removable head, low carbon steel containers, which are permanently lined so as to be compatible with the type of material being delivered within. (Note: Both cover and drum must be new). The container size shall be as required in the Invitation for Bids and shall be 55 gallons.

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

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

RETURNS of EMPTY CONTAINERS: All 275-gallon totes and 55-gallon drums will remain the property of the paint supplier. It is the responsibility of the paint supplier to remove the empty containers from the using agency's yard(s) in a timely manner after receiving notification from the using agency as to the readiness. It is the responsibility of the agency to notify the contractor when the location has accumulated a minimum of 12 empty 275-gallon totes or 60 55-gallon drums. Smaller quantities may be picked up upon mutual agreement between paint supplier and agency personnel.

The contractor shall schedule container pick-up at the agency's site.

The paint supplier or truck driver shall call the user to arrange for pick-up of the empty totes. Pickup may be scheduled Tuesdays through Thursdays between the hours of 10:00 AM and 3:00 PM excluding State holidays, unless the using agency approves other arrangements. It is the responsibility of the using agency to use agency equipment to place the fully discharged containers onto the truck as directed by the truck driver. The truck driver will be responsible for properly securing the empty totes for shipment. The user of these paints requires the resultant contractor to pick up and dispose of the drums.

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

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

D. LOT VII: The compound shall be packed in bags and the contractor shall be responsible for the proper delivery thereof. The containers shall not affect its contents, nor contain foreign contaminants. Bags shall be either standard cemented center seam, plastic-lined burlap bags, or plastic-lined paper bags. A bag shall contain 50 lbs. net weight. The bags shall be packed and delivered on disposable pallets, 40 bags to a pallet (2,000 lbs.). The pallets shall be constructed to allow use of forklifts.

(continued)

DETAILED PRODUCT SPECIFICATIONS (Cont'd)

LABELING:

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

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

“FREE FROM LEAD HAZARD”

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

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

The label shall also include the following:

“KEEP OUT OF REACH OF CHILDREN”.

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

2. Name and Address of Manufacturer.
3. Manufacturer’s Product Name and Identifying Number.
4. Kind of paint, color name, and its identifying number.
5. Volatile Organic Content (VOC), expressed in pounds per gallon.
6. Net volume of paint in container.
7. N.Y.S. Item Number.
8. Use intended and directions for application.
9. Precautionary instructions in regard to hazardous properties such as lead content, toxicity, fumes, storage temperature, minimum temperature for application, etc.
10. Each item that complies with ENCON Reg. Part 205, shall bear on the label or container the following:

“PRODUCT COMPLIES WITH ENCON REG. PART 205”.

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

QUALITY ASSURANCE REQUIREMENTS: (LOTS I & II)

The New York State Department of Transportation will assign inspection at the paint manufacturing facility to implement the quality assurance requirements. The manufacturer is required to notify assigned inspection agency of the intention to can paint for this contract at least 48 hours in advance of the canning of the initial batch of paint. Contact the Product Operations Office of the Materials Bureau at (518) 457-5642 for information on the assigned inspection agency.

The manufacturer is responsible for quality control testing and certification of each batch (lot) of paint produced for the Department under this contract. Once the manufacturer begins production of the contract items, the Department will sample and test for specification compliance. The Department shall test and take appropriate action on a given lot no later than 14 working days from receipt of sample(s). During this time period, no lot of paint may be shipped by the manufacturer until it has been accepted as passing.

For 2012, Samples are due within 14 days of notification by OGS Procurement Services of pending award status. For 2013, 2014, 2015 and any subsequent renewal years, the first sampling lot of the year will be ready for testing by February 1 of those calendar years.”

Failure to meet this requirement may result in liquidated damages assessed to the manufacturer by the State. See page 10 for more information.

(continued)

DETAILED PRODUCT SPECIFICATIONS (Cont'd)

QUALITY ASSURANCE PROCEDURE FOR LOTS I & II.

<u>Step</u>	<u>Responsibility</u>	<u>ACTION</u>	
		<u>LOT 1</u>	<u>LOT 2</u>
		<u>COMMON for BOTH LOTS</u>	
<u>1.</u>	<u>Manufacturer</u>	Plans to manufacture a batch of paint.	
<u>1A.</u>	<u>Manufacturer</u>	<p>Assigns a batch number to the batch :</p> <p><i>(A batch shall consist of a specific color of paint for waterborne acrylic or of a specific component (Part A of Part B) for Epoxy, which is canned at one time from a single pouring tank. This may be the combination of two or more mix tanks that have been completely blended in the pouring tank, but may never represent more than a single pouring tank, filled once)</i></p> <p>Each batch is assigned a unique batch number by the manufacturer. <i>A two-component epoxy consists of pigment and epoxy resin (Part A) and reactive catalyst (Part B). When combined at a ratio of 2:1 (2 parts A to 1 part B), the combined quantity shall represent a single lot. It is permissible for a single batch of Part B material to be included in a maximum of two lots).</i></p> <p>The manufacturer then assigns consecutive lot numbers to the two-component epoxy starting with "1" at the beginning of this Contract.</p>	
<u>1B.</u>	<u>Manufacturer</u>	Person responsible for scheduling the pour shall provide the inspection agency with the weekly production schedule at a minimum of 48 hours in advance of the first day of the production week that they plan to can their first batch of paint.	
<u>1C.</u>	<u>Manufacturer</u>	<p>Subsequent to inspection and sampling of each lot, samples shall be submitted to NYSDOT Materials Lab for testing before February 1 of the calendar year. (See page 18 for address)</p> <p><i>(Note: A partially filled container shall not be filled to capacity from another lot).</i></p>	
<u>1D.</u>	<u>Manufacturer</u>	Of the first six (6) lots of paint manufactured three shall be white & three shall be yellow.	
<u>*Failure to meet this requirement may result in liquidated damages assessed to the manufacturer by the State.</u>			
<u>2.</u>	<u>Inspection Agency</u>	Schedules an inspector to be at the manufacturing plant based on Step 1b as found above.	
<u>3.</u>	<u>Agency Inspector</u>	<p>If the manufacturer does not start to manufacture paint within two hours of the inspector's scheduled arrival, the inspector shall leave**, otherwise proceed to step 4.</p> <p><u>**The person responsible for scheduling the pour must reschedule by contacting the inspection agency at a minimum of 48 hours in advance of the time they plan to can the batch of paint. In addition, the manufacturer shall reimburse the inspection agency for all inspection/travel costs associated with the manufacturer's inability to batch paint within two hours as described above.**</u></p>	
<u>4.</u>	<u>Agency Inspector</u>	Arrives at manufacturing plant and visually inspects the pouring tank to insure that all paint to be canned comes from that tank.	
<u>4A.</u>	<u>Agency Inspector</u>	If the pouring tank contains paint from two or more mix tanks, verifies that the pouring tank contains mixing equipment.	
<u>4B.</u>	<u>Agency Inspector</u>	Inspects the cleanliness of the containers that are to receive the paint to help avoid possible contamination of the material.	
<u>4C.</u>	<u>Agency Inspector</u>	Checks the labels on the containers to ensure compliance in accordance with this Contract under title: <u>LABELING.</u>	
<u>4D.</u>	<u>Agency Inspector</u>	Visually determines the quantity of paint in the mixing tank.	
<u>4E.</u>	<u>Agency Inspector</u>	Insures that the batch number for the batch to be canned is either already marked on the top or side of the containers, or the proper equipment is available to mark the cans as soon as they are filled	
<u>5.</u>	<u>Agency Inspector</u>	<p>A sample shall consist of a minimum of a one-pint can taken during the canning process. A total of six one-pint samples of the paint shall be taken from each batch.</p>	<p>A sample shall consist of a minimum of a one-pint can taken during the canning process from each batch. When the manufacturer's recommended mixing ratio is 2:1 (Part A to Part B) the sample of the Part A material will consist of two pints and the Part B material one pint.</p>

(continued)

QUALITY ASSURANCE PROCEDURE FOR LOTS I & II (Cont'd)

<u>Step</u>	<u>Responsibility</u>	<u>ACTION</u>	
		<u>LOT 1</u>	
		<u>COMMON for BOTH LOTS</u>	
<u>5A.</u>	<u>Agency Inspector</u>	Two samples shall be taken from approximately the mid-point of each third of the pour for a total of six samples	Draws separate one-pint samples of the Part A and Part B component directly from the pouring tank spout at the approximate middle of the pour
<u>5B.</u>	<u>Agency Inspector</u>	Three (3) red tape seals shall be placed on the pint containers at 120 degree intervals and parallel to the long axis of the container, equally divided between the cover and the container side. See Illustration A	
<u>6.</u>	<u>Agency Inspector</u>	Identifies the samples by marking the following information on the side of each can.	
		a. Lot Number b. Batch Number c. Group/Item Number d. Manufacturer's name and location	a. Lot Number b. Batch Number(s) c. The following statement (as appropriate) Part A – Contains Pigment & Epoxy Resin Part B Contains Catalyst d. Group/Item Number e. Manufacturer's name and location
<u>7.</u>	<u>Agency Inspector</u>	Verifies that the total quantity canned is reasonably close to the amount originally observed in the mixing tank.	
<u>8.</u>	<u>Agency Inspector</u>	Prior to Certification, the inspector shall apply Department security seals as shown in Illustrations A, B and C	Prior to Certification, the inspector shall apply Department security seals as shown in Illustrations B
<u>9.</u>	<u>Agency Inspector</u>	Completes the BR240a form <u>per lot</u> , See Illustration D . The Br240a shall be submitted as follows: Green and White copies submitted with inspector's report to Product Operations (see address, page 18). Pink retained by the inspector (<i>manufacturer is permitted to make a copy for their record</i>). Yellow and Buff go with the sample(s) to NYSDOT Materials Lab.	
<u>10.</u>	<u>Agency Inspector</u>	Packages samples, including Form BR-240a enclosed in a BR-241 envelope and places a red tape seal over tab of envelope to assure seal.	
<u>11.</u>	<u>Manufacturer</u>	Assumes the responsibility and cost of transmitting all samples with proper forms to the NYSDOT Materials Lab for the duration of the Contract.	
<u>12.</u>	<u>NYSDOT Materials Lab</u>	Performs required test(s).	
<u>13.</u>	<u>Product Operations</u>	Reviews test results and takes appropriate action of Accept or Reject for a tested lot.	
<u>14.</u>	<u>Product Operations</u>	Notifies the Contract Administrator at OGS, the manufacturer and the inspection agency of Acceptance or Rejection for a tested lot.	
<u>15.</u>	<u>Inspection Agency</u>	Schedules to go back to manufacturer to complete inspection process based on notification of accept or reject from Product Operations (<i>this must occur within 48 hours of notification</i>).	
<u>16.</u>	<u>Agency Inspector</u>	Prior to Certification, if a lot is Accepted , the inspector places appropriate acceptance seals on containers from accepted lot (See Illustrations A, B and C) and checks to see that manufacturer placed labels on accepted containers with required information.	Prior to Certification, if a lot is Accepted , the inspector places appropriate acceptance seals on containers from accepted lot (See Illustration B) and checks to see that manufacturer placed labels on accepted containers with required information.
<u>17.</u>	<u>Agency Inspector</u>	Prior to certification, if a lot is Rejected , the inspector removes all red seals on containers from rejected lot. Manufacturer is not permitted to release rejected paint to the Regions.	
<u>18.</u>	<u>Manufacturer –</u>	Manufacturer is now permitted to release accepted paint as requested.	

(continued)

QUALITY ASSURANCE PROCEDURE FOR LOTS I & II (Cont'd)

<u>Step</u>	<u>Responsibility</u>	<u>ACTION</u>	
		<u>LOT 1</u>	<u>LOT 2</u>
		<u>COMMON for BOTH LOTS</u>	
<u>19.</u>	<u>Manufacturer On Certification</u>	The manufacturer is permitted to release paint to customers without the sampled and/or accepted seals affixed to the containers. However, the manufacturer shall furnish a certificate of compliance with a shipment of certified paint.	
<u>19A.</u>	<u>Manufacturer On Certification</u>	The Department will monitor the quality of the paint while the manufacturer is permitted to supply on certification. The monitor program will require the manufacturer to notify the inspection agency in accordance with Step 1b of this appendix	
<u>20.</u>	<u>Agency Inspector</u>	Under <u>Certification</u> , the monitoring program shall require the inspector to take samples at a rate of 1 per 5 lots per color or as directed by the Department. <i>(The Department reserves the right to sample and test every lot for Accept or Reject consideration in the event the manufacturer is unable to demonstrate acceptable quality control or is no longer permitted to supply under <u>Certification</u>.)</i>	
<u>21.</u>	<u>Manufacturer</u>	The manufacturer shall keep all Inventory Records up to date and available upon request.	

SHIPPING & REPORTING

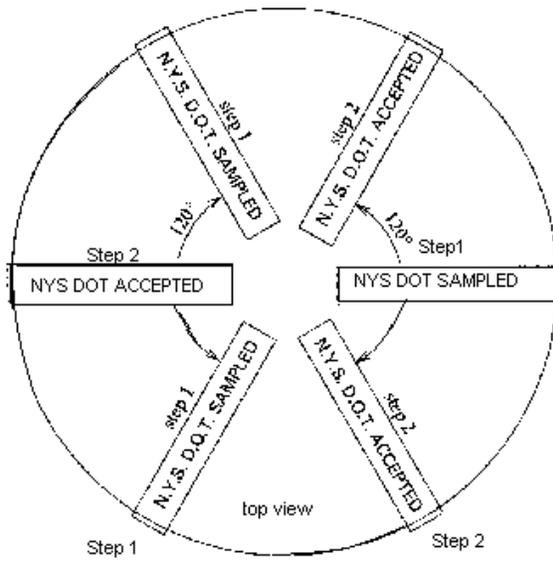
ALL PRODUCTION SAMPLES – along with **FORM - BR240a** (Green & White Copies)
ARE TO BE SHIPPED TO:

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

(continued)

QUALITY ASSURANCE ILLUSTRATIONS FOR LOTS 1 & 2

Illustration A



5 Gallon Container or
1 Pint Container

Not to Scale

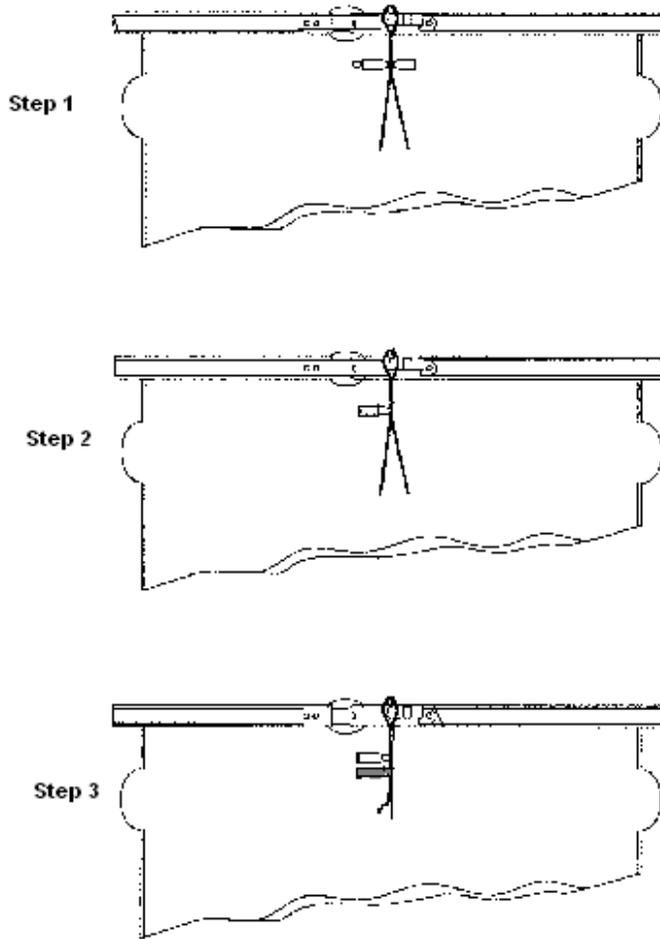
Note: Three (3) Red and Green tape shall be placed at 120 degree intervals and parallel to the long axis of the container equally divided between the cover and the container side as shown above. The cover lugs shall be considered as a portion of the cover and one end of each seal shall be placed in contact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

(continued)

DETAILED PRODUCT SPECIFICATIONS (Cont'd)

QUALITY ASSURANCE ILLUSTRATIONS FOR LOTS 1 & 2

ILLUSTRATION B



55 Gallon Container

Not to Scale

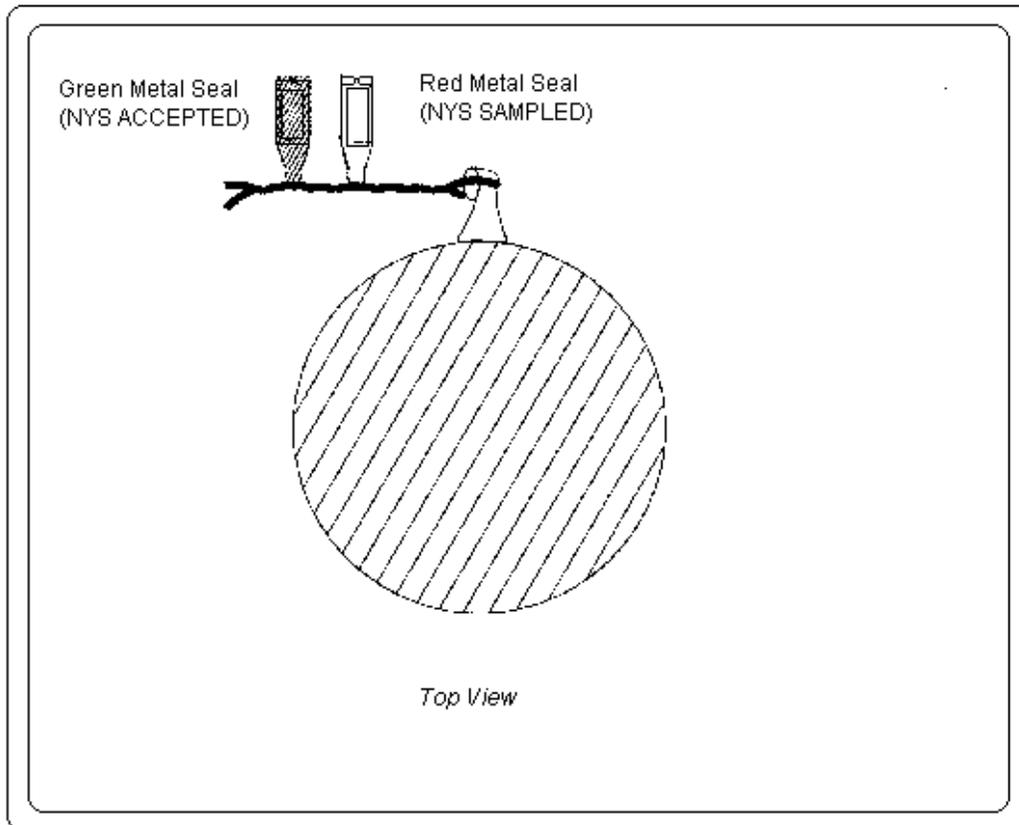
Note: The wire shall be drawn securely and tightly through the eyelet. The Red & Green Seals shall be certified in such a manner that the connection can not be loosened without destroying the seal

(continued)

DETAILED PRODUCT SPECIFICATIONS (Cont'd)

QUALITY ASSURANCE ILLUSTRATIONS FOR LOTS 1 & 2

ILLUSTRATION C



High Density Polyethylene IBC Tote

Not to Scale

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

(continued)

DETAILED PRODUCT SPECIFICATIONS (Cont'd)

QUALITY ASSURANCE ILLUSTRATIONS FOR LOTS 1 & 2

Illustration D

BR 240a (11/74) SAMPLE AND ACCEPTANCE TRANSMITTAL NYSDOT MATERIALS BUREAU		SERIAL NO. 257232	DATE REC'D	TEST NO.		
To: _____ Material Represented by the Sample Described Below Was _____						
On _____ For _____						
<small>(Action Official Only When Validated Below By The Materials Bureau)</small>						
UPPER PORTION FOR MATERIALS BUREAU ONLY — INSPECTOR TO COMPLETE ALL APPLICABLE BOXES BELOW						
16. Additional Info (See Instructions on Rear) Batch No. Quantities of Containers 6 - 1 pint samples sent in by Manufacturer <small>RETAIN PINK COPY FOR YOUR RECORDS FORWARD ALL OTHERS TO MATERIAL BUREAU</small>	1. MATERIAL White or Yellow Water-Borne Traffic Paint		2. Item No. 727-06XX	3. DATE SAMPLED XX/XX/XX	4. CONTRACT NO. Group #	
	5. SUPPLIER AND LOCATION NAME, CITY, STATE			6. QUANTITY IN LOT XX GALLONS	7. LOT NO. XX	
	8. MANUFACTURER LOCATION (IF DIFFERENT THAN ABOVE) LEAVE BLANK			9. BATCH NO. XXXXXX	10. DATE OF MFGR XX/XX/XX	
	11. SAMPLED AT <input type="checkbox"/> MILL <input type="checkbox"/> PLANT <input type="checkbox"/> JOB		12. TYPE <input type="checkbox"/> CONTROL SAMPLE <input type="checkbox"/> INFO. Sample <input type="checkbox"/> BPR SAMPLE <input type="checkbox"/> APPROVED LIST MATERIAL <input type="checkbox"/> CERTIFIED MAT.		13. SAMPLED FROM POUR	
	15. CONTRACTOR AND PROJECT LOCATION LEAVE BLANK			14. SAMPLED BY (INC. DIST # or AGCY) NAME, I.A. CODE		MATERIALS BUREAU VALIDATION

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

(continued)

QUALITY ASSURANCE PROCEDURE FOR LOTS III - VI:

The bidder shall be aware that throughout the duration of the contract, to ensure compliance with the detailed specifications at all times, each delivery made may be subject to field sampling prior to its use by the ordering agency. The sampling procedure shall be random for an adequate supply of paint to test in accordance with the specifications stated for Lot I in the IFB.

QUALITY ASSURANCE PROCEDURE FOR LOT VII

The bidder shall be aware that throughout the duration of the contract, to ensure compliance with the detailed specifications at all times, each delivery made may be subject to field sampling prior to its use by the ordering agency. The sampling procedure shall be as follows:

1. The sampling shall be random.
2. Using a thief or sampling tube (commonly known as a "grain sampler"), a "spot sample" will be removed from at least three separate bags
3. All "spot samples" will be combined into one "test sample" container and deemed to constitute a representative sample of the subject truckload delivery. The "test sample" should weigh approximately five lbs. This "test sample" will be forwarded to the ordering agency's designated laboratory for analysis.
4. Alternatively, Statistical Process Control Methods following ASTM E 105 and E 1994, or ANSI/ASQ Z1.4 and Z1.9 may be used to monitor the quality of the product so that it meets the requirement of the applicable detail specification.

Any deviations from the detailed specification found in the field sample shall be sufficient justification for rejection of entire shipment and a conforming replacement shipment shall be delivered within seven (7) calendar days of date of rejection notice, as per specifications.

MARKING, PALLETIZATION AND SHIPPING:

LOT VII (Item 8) shall be packaged per the clause found on page 14 (PACKAGING - Part D).

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

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

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

(continued)

CONTRACT DIRECTORY

CONTRACT AWARDEES (by LOT):

LOT I - ITEMS 1 and 2 ACRYLIC WATERBORNE TRAFFIC PAINT: LEAD-FREE, V.O.C. COMPLIANT –
WHITE (Item 1) & ORGANIC YELLOW (Item 2)

LOT II - ITEM 3 (PARTS A, B & C) TRAFFIC PAINT: TWO-PART EPOXY (WHITE & YELLOW)

LOTS III through VI - ITEMS 4 through 7 - ACRYLIC WATERBORNE TRAFFIC PAINT: LEAD-FREE, V.O.C. COMPLIANT –
BLACK, BLUE, GREEN, & PURPLE

AWARDED TO: ENNIS PAINT, Inc. {Contract #PC65790}

Contractor Contact Information:

CONTRACT #: PC65790	Ennis Paint, Inc.		
	Contract Administrator, Expeditor	Emergency Contact Technical Information	Contact Person for Container Returns
	Victoria Stolz	Omer Shafi	Krystal Miller
	Contract Administrator	QC Lab Manager	Transportation Administrator
	(336) 308-3970	(800) 331-8118	(804) 298-6175
	(800) 331-8118	(800) 331-8118	(800) 331-8118
	Cellular Phone	(219) 765-7600	
	E-mail	Vstolz@ennisflint.com	oshafi@ennisflint.com
	Fax	(800) 555-0217	Kmillier@ennisflint.com
	Fax		(972) 872-2815
HOURS OF OPERATIONS	9:00 AM – 6:00 PM EST - Monday through Friday		

As noted all 275 Gallon Totes and 55 Gallon Drums remain the property of Ennis Paint, Inc. Ennis Paint, Inc has designated The Consolidated Container Company of Minneapolis, Minnesota as the party handling the transportation of empty containers. Contact Mark Bates (above) when containers are ready for return. See page 14 for detailed information.

* * * * *

LOT VII – ITEM 8: DRYING AGENT FOR WATERBORNE PAINT

AWARDED to: **POTTERS INDUSTRIES, LLC** {Contract #PC65791}

Contractor Contact Information:

Contract #: PC65791	Potters Industries, LLC	
	Contract Administrator Expeditor	Emergency Contact Technical Information
	Yvonne Harris	David Fenn
	Contract Administrator	Senior Regional Sales Manager
	(610) 651-4714	(860) 567-3552
	(800) 552-3237 ext. 4714	(800) 552-3237
	Cellular Phone	(203) 733-2294
	E-mail	yvonne.harris@pottersbeads.com
	Fax	David.Fenn@pottersbeads.com
	Fax	(610) 408-9723
Fax	(860) 567-2231	
HOURS OF OPERATIONS	7:00 A. M. to 4:00 P. M. EST - Monday through Friday	

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(continued)

LINE ITEM AWARD:

LOT and ITEM DESCRIPTIONS:

LOT I - ITEMS #1 and #2 **Awarded to: ENNIS PAINT, Inc. (Contract #PC65790)**
WHITE & YELLOW - TRAFFIC ZONE PAINT, ACRYLIC WATERBORNE (LEAD-FREE),
(VOC Compliant), conforming to the "Detailed Specifications" as presented in IFB 22360.

ITEM #	Container Size	Gallons In Container	Price Per Gallon	Total Price Per Container
1 White	5 gallon pail	5	\$9.05	\$45.25
	55 gallon drum	55	\$8.97	\$493.35
	275 gallon tote	275	\$7.97	\$2,191.75
Manufacturer's Product Identification Number::			983201	
2 Yellow	5 gallon pail	5	\$9.50	\$47.50
	55 gallon drum	55	\$8.65	\$475.75
	275 gallon tote	275	\$8.24	\$2,266.00
Manufacturer's Product Identification Number::			983212	

LOT II - ITEM #3 **Awarded to: ENNIS PAINT, Inc. (Contract #PC65790)**
WHITE & YELLOW - TRAFFIC ZONE PAINT: Two Part EPOXY,
conforming to the "Detailed Specifications" as presented in IFB 22360.

ITEM #	Container Size	Gallons In Container	Price Per Gallon	Total Price Per Container
3A White Resin	55 gallon drum	50	\$24.84	\$1,242.00
Manufacturer's Product Identification Number::			999311	
3B Yellow Resin	55 gallon drum	50	\$23.35	\$1167.50
Manufacturer's Product Identification Number::			999312	
3C Catalyst	55 gallon drum	50	\$17.75	\$887.50
Manufacturer's Product Identification Number::			999399	

LOT III - ITEMS #4 **Awarded to: ENNIS PAINT, Inc. (Contract #PC65790)**
"Contrast" BLACK - TRAFFIC ZONE PAINT, ACRYLIC WATERBORNE - (LEAD-FREE),
(VOC Compliant), conforming to the "Detailed Specifications" as presented in IFB 22360.

ITEM #	Container Size	Gallons In Container	Price Per Gallon	Total Price Per Container
4 BLACK	5 gal. pail	5	\$10.81	\$54.05
	55 gal. drum	55	\$9.75	\$536.25
Manufacturer's Product Identification Number::			985203	

(continued)

LINE ITEM AWARD:

LOT and ITEM DESCRIPTIONS:

LOT VII - ITEM 8 (PARTS A, B & C) Awarded to: **POTTERS INDUSTRIES, LLC (Contract #PC65791)**
DRYING AGENT FOR WATERBORNE PAINT
 fully conforming to the "Detailed Specifications" as presented in IFB 22360.

ITEM 8(A) Full Truckload Quantity of 44,000 pounds or more:

	Price Per Pound	Price Per Package
Packaged in 50 pound bags:	\$2.20	\$110.00

ITEM 8(B) Less than Truckload Quantity of 22,000 to 43,950 pounds:

	Price Per Pound	Price Per Package
Packaged in 50 pound bags:	\$2.30	\$115.00

ITEM 8(C) Less than Truckload Quantity of 2,000 to 21,950 pounds:

	Price Per Pound	Price Per Package
Packaged in 50 pound bags:	\$2.50	\$125.00

Manufacturer's Product Name: Visilok
 Product Identification Number: 614014
 Estimated Delivery: 14 Days A/R/O
 Shelf Life: Indefinite

* * * * *

(continued)

**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 by FAX to 518/474-2437 or mail to:

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

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