

material. If material is rejected in an inspection, the supplier shall receive no reimbursement. The supplier will be responsible for removing the rejected material at no additional cost to the Commonwealth.

The supplier shall furnish, with each shipment, a certified delivery ticket or electronic ticket. CS-4171B - <http://www.dot.state.pa.us/public/PubsForms/Forms/CS-4171b.pdf> is to be included with each delivery as referenced in PennDOT Publication 408 unless other arrangements are made.

- G. On all bulk shipments originating outside the Commonwealth of Pennsylvania, a signed certified weight slip from the supplier must accompany each truck. Shipments originating within the Commonwealth must be weighed by a licensed Public Weigh Master and accompanied by a Weigh Master's certificate. The scale used must be approved by the Department of Agriculture, Bureau of Standard Weights and Measures, or tested and approved by a Scale Repair Service with testing capabilities with appropriate weights and procedures as contained in Scale Code NBS Handbook 44. Weights used to conduct tests must be certified to be within Class F tolerances. The Weigh Master's Certificate must be in conformance with Pennsylvania Code Title 70. In addition, a digital printer must be used if the source has that capability in its scale. The Commonwealth reserves the right to have truck deliveries check weighed at independent weighing stations. All costs for check weighing will be the responsibility of the Supplier.

If it is determined that a vehicle owned or leased by the supplier operated on public highways carrying weight in excess of the registered gross or axle weight limits established in Chapter 49 of the Motor Vehicle Code, the Commonwealth is not liable for payments for that amount of material equal to the excess over the registered gross and/or axle weight limits. The supplier may elect to deliver the excess material to the Commonwealth without charge or to retain the material in the vehicle.

- H. The Supplier shall be completely responsible for the preparation of accurate weight slips, certifications attesting to the accuracy of the weight recorded, and assuring conformance with Section 107.23(b) of Pub 408 (latest version), including the payment of liquidated damages as specified therein. **The Supplier shall designate a licensed weight person(s) to act as its agent.**

The Supplier shall have scales calibrated annually by an independent agency acceptable to the Commonwealth. A Commonwealth Inspector may monitor weighing, and mobile weigh and scale inspection teams may provide random checking.

The Supplier shall weigh empty trucks, used to haul material measured by weight, daily unless otherwise directed. When the temperature is below 32F, the Commonwealth may require the supplier to weigh empty trucks upon every return trip and adjust the tare weight accordingly.

When the invoice weight exceeds the net weight determined by an agency mobile weigh team by more than 3%, the deviation will be considered excessive. The Supplier shall take immediate corrective action upon notification of an excessive deviation. Within 30 days of notification, provide the using agency (District Executive, in the case of PennDOT) with a written description of corrective actions and safeguards, and the time at which they were implemented.

- I. If a supplier is having difficulty furnishing materials against a Commonwealth PO from the selected contract source(s), the supplier may request permission from the using agency (District Executive or their designee, in the case of PennDOT) to supplement shipments from another approved Asphalt Materials source in order to honor a PO. It does not matter if it is a competitor's source. The condition is that regardless of change of source, the using agency will pay the lowest delivered cost per ton; i.e. if the supplemental source is closer than the original source, mileage is charged from the supplemental

source but the mileage rate is the lower of the original source and supplemental source. If a supplier wishes to implement this clause, they must provide material from a source approved prior to the bid opening.

- J. In the event of an emergency situation that threatens public health, welfare or safety, or for circumstances outside the control of the agency that creates an urgency of need and does not permit time to solicit competitive bids, using agencies may obtain materials necessary to avert a crisis without soliciting bids. As soon as practical, agencies must complete the formal Emergency Procurement procedure to receive retroactive approval from DGS.

ISSUING OFFICE: This ITQ is managed and administered by the Commonwealth of Pennsylvania, Department of General Services, Bureau of Procurement. The Issuing Office is the sole point of contact in the Department for this ITQ. Please refer all inquiries to:

John Jones, Commodity Specialist, Bureau of Procurement, (717) 346-3848 / jotjones@pa.gov

Jamon Fogarty, Assoc. Commodity Manager, Bureau of Procurement, (717) 214-9723 / jafogarty@pa.gov

TERM OF CONTRACT: Any contract issued to qualified suppliers, as a result of this ITQ, shall commence on the Contract Effective Date, but no sooner than February 1, 2021 and shall end on January 31, 2026 with one (1) five-year renewal available.

QUALIFICATIONS: Suppliers interested in becoming an ITQ supplier must meet all of the following requirements. Failure to meet any of the below requirements will result in the registration being rejected.

- A. If the Supplier is a producer, the Supplier must be approved by the Department of Transportation, Laboratory Testing Section, Materials and Testing Lab, 81 Lab Lane, Harrisburg, PA 17110, prior to time of enrollment and identified as it is listed in the Department of Transportation's Publication 41, Bulletin 41 Approved Asphalt Materials Producers (current edition).

Failure to maintain approval in the Department of Transportation Bulletin 41 (current edition) or provide approved materials from an approved source will result in suspension of the Supplier from the ITQ until such time as when approval has been re-secured. Suppliers will be provided 90 days to restore approval after which time the supplier's contract may be terminated upon written notification.

Information on becoming qualified as a producer/agent can be found on the Department of Transportation's Bulletin 41 can be located at:

http://www.dot.state.pa.us/public/pdf/construction/bulletins_supporting_docs/Bulletin%2041%20-%20Supporting%20Information.pdf.

- B. **Reciprocal Limitations:** This ITQ is subject to the Reciprocal Limitations Act. Suppliers must complete and submit with the ITQ Response the State of Manufacture Chart, which is contained in GSPUR-89 ("Reciprocal Limitations Act Requirements") which is attached to and made part of this ITQ.
- C. **Asphalt Materials Counties of Interest:** Suppliers must choose the counties in which they wish to supply Asphalt Materials. Suppliers may add or remove counties of interest at any time during the life of the contract.
- D. **Supplier Contact Information Form:** Suppliers must complete/submit a Supplier Contact Information Form, which is attached to and made part of this ITQ. On the form, Suppliers must provide general information including Supplier name, address, telephone number, e-mail address, and SAP Vendor ID Number.

Suppliers must provide the name, title, telephone number, fax number, and e-mail address for the individual who will be responsible for receiving the Request for Quotes (RFQ) and for preparing and submitting the Supplier's quotes for the RFQ.

Suppliers have the sole responsibility to **maintain and update** when necessary all contact information - especially a valid e-mail address - for the ITQ on file with DGS.

OPEN ENROLLMENT: The enrollment period shall commence on the date the ITQ is issued and shall remain open through the life of the contract. All solicitation responses received from interested suppliers during this period will be considered and all suppliers whose responses meet the minimum requirements contained in this statement of work will be issued a contract. **It is in the best interest of all suppliers to submit their proposals prior to close of business January 1, 2021 in order to be eligible to begin receiving RFQ's at the start of the contract period.**

The evaluation of a solicitation response and the subsequent contract execution process may take an estimated thirty (30) Commonwealth business days or more to complete. Please note that the evaluation and contract execution process may take longer to complete depending on the volume of responses received and the availability of Commonwealth resources.

MATERIAL CATEGORIES: Suppliers will need to pick the appropriate commodity code(s) to qualify for this contract. Suppliers will select the appropriate code(s) under the Business Details section of the qualification process. The Commonwealth may add additional commodity codes or add items to an existing material category as the need arises. The table below lists the appropriate commodity code and description of each material category.

COMMODITY CODE	DESCRIPTION OF MATERIAL CATEGORY
30121601-ITQ-310 (Asphalt Materials)	This category contains the Asphalt Materials commonly used by Commonwealth agencies. This category may cover FOB delivery or Source pick-up of materials.

GENERAL INFORMATION/REQUIREMENTS:

A. Type of Contract. Upon determination that the Contractor meets the ITQ requirements, the Commonwealth will issue a contract to the Contractor. Upon receipt of a PO issued under this Contract, the Contractor agrees to furnish the requested material(s) to the Commonwealth agency issuing the PO.

B. Order of Precedence. If any conflicts or discrepancies should arise in the terms and conditions of this Contract, or the interpretation thereof, the order of precedence shall be:

- i. This Contract;
- ii. The data resident on the [ITQ web site](#) and incorporated herein by reference at the date of execution of the Contract or issuance of an RFQ off of this Contract, whichever is later, including but not limited to the promises and certifications the Contractor made in qualifying for the Contract;

If any conflicts or discrepancies should arise in the interpretation of a PO, the order of precedence shall be:

- i. The material category definitions, descriptions, qualification requirements, and contract terms and conditions set forth in the RFQ;
- ii. This Contract;

- iii. The PO and any attachment thereto, including: (1) the Contractor's Proposal, as accepted by the Commonwealth; (2) the RFQ.

C. Bid Protest Procedure (April 2016) The Bid Protest Procedure is on the DGS website. [Click here](#)

D. COSTARS Purchasers. Section 1902 of the Commonwealth Procurement Code, 62 Pa.C.S. § 1902 ("Section 1902"), authorizes local public procurement units and state-affiliated entities (together, "COSTARS Members") to participate in Commonwealth procurement contracts that the Department of General Services ("DGS") may choose to make available to COSTARS Members. DGS has identified this ITQ as one which will be made available for COSTARS Members' participation.

- a. Only those entities registered with DGS are authorized to participate as COSTARS Members in this Contract. A COSTARS Member may be either a local public procurement unit or a state-affiliated entity.
 1. A "local public procurement unit" is:
 - Any political subdivision (local government unit), such as a municipality, school district, or commission;
 - Any public authority (including authorities formed under the Municipality Authorities Act of 1955 or other authorizing legislation, such as the Public Transportation Law or the Aviation Code);
 - Any tax-exempt, nonprofit educational institution or organization;
 - Any tax-exempt, nonprofit public health institution or organization;
 - Any nonprofit fire, rescue, or ambulance company; and
 - Any other entity that spends public funds for the procurement of supplies, services, and construction (such as a council of governments, an area government, or an organization that receives public grant funds).

The Department reserves the right to review and determine eligible applicants as Local Public Procurement Units on a case-by-case basis.

2. A state-affiliated entity is a Commonwealth authority or other Commonwealth entity that is not a Commonwealth agency. The term includes:
 - The Pennsylvania Turnpike Commission;
 - The Pennsylvania Housing Finance Agency;
 - The Pennsylvania Municipal Retirement System;
 - The Pennsylvania Infrastructure Investment Authority;
 - The State Public School Building Authority;
 - The Pennsylvania Higher Education Facilities Authority, and
 - The State System of Higher Education.

The COSTARS Program is not available for use by Executive Agencies and Independent Agencies as defined by the Commonwealth Procurement Code, or any agency or entity using funds appropriated to the Department of General Services through Capital Budget Project Itemization legislation for the procurement of furniture, fixtures, and equipment.

3. A complete list of local public procurement units and state-affiliated entities that have registered with DGS and that are authorized to procure items from the Contract can be found at <http://www.costars.state.pa.us/SearchCOMember.aspx>.

- b. COSTARS Members have the option to purchase from this Contract, from any DGS contract established exclusively for COSTARS Members in accordance with the requirements of Section 1902, from any other cooperative procurement contracts, or from their own procurement contracts established in accordance with the applicable laws governing such procurements. The Contractor understands and acknowledges that there is no guarantee that a COSTARS Member will place an order under this Contract, and that the decision to procure from this Contract is within the sole discretion of each COSTARS Member.
- c. DGS is acting as a facilitator for COSTARS Members who may wish to purchase under this Contract. COSTARS Members that participate in this Contract and issue POs (“POs”) to Contractors are third party beneficiaries who have the right to sue and be sued for breach of this Contract without joining the Commonwealth or DGS as a party. The Commonwealth will not intervene in any action between a Contractor and a COSTARS Member unless substantial interests of the Commonwealth are involved.
- d. COSTARS Members electing to participate in this Contract will order items directly from the Contractor and be responsible for payment directly to the Contractor.
- e. Those Contractors electing to permit COSTARS Members to procure from this Contract shall pay the Required Administrative Fee applicable to the Contractor’s classification:

Contractor Classification	Required Administrative Fee
DGS-verified Small Diverse Business Contractor	\$166
DGS Self-Certified Small Business Contractor	\$500
All Other Contractor	\$1,500

- 1. Each Contractor electing to permit COSTARS Members to participate in the Contract must submit the COSTARS Program Election to Participate form with its bid submittal and pay the applicable Administrative Fee upon Contract award in order to sell the awarded items/services to COSTARS Members. If the Contractor is a Department of General Services Self-Certified Small Business or Department of General Services-verified Small Diverse Business, a copy of its active Small Business Contracting Program certificate must be included with the bid submittal.
- 2. At the beginning of each Contract year and upon any Contract renewal, the Contractor shall submit a check for the required amount, payable to “Commonwealth of PA”. The Contractor must pay the Administrative Fee at each contract renewal date to continue to sell the awarded items/services to COSTARS Members.
- f. DGS has registered the COSTARS name and logo (together, the “COSTARS Brand”) as a trademark with the Pennsylvania Department of State. Therefore, the Contractor may use the COSTARS Brand only as permitted under in this Subsection.
 - 1. The Contractor shall pay the Administrative Fee covering its participation in the program, including without limitation any use of the COSTARS Brand, for each year of the Contract period. The fee is payable upon Contract award and prior to the renewal date for each succeeding Contract period.

2. DGS grants the Contractor a nonexclusive license to use the COSTARS Brand, subject to the following conditions:
 - The Contractor agrees not to transfer to any third party, including without limitation any of its subcontractors or Contractors, any privileges it may have to use the COSTARS Brand under this Contract.
 - The Contractor agrees not to use the COSTARS Brand to represent or imply any Commonwealth endorsement or approval of its products or services.
 - The Contractor is permitted to use the COSTARS Brand in broadcast, or Internet media solely in connection with this Contract and any other Contract with the Commonwealth under which it has agreed to make sales to COSTARS Purchasers. The Contractor may use the COSTARS Brand on business cards, brochures, and other print publications so long as the purpose is to identify the Contractor as a COSTARS vendor, and only so long as the required Contract fee is kept current.
 - Should this Contract terminate for any reason, the Contractor agrees promptly to remove the COSTARS Brand from any and all print and electronic media and to refrain from using the COSTARS Brand for any purpose whatsoever from the date of Contract termination forward.
 - The Contractor agrees to defend, indemnify, and hold harmless the Commonwealth of Pennsylvania and DGS from and against all claims, demands, liabilities, obligations, costs, and expenses of any nature whatsoever arising out of or based upon the Contractor's use of the COSTARS Brand.
 - The Contractor agrees it has no property rights in the use of the COSTARS Brand by virtue of this nonexclusive license. The Contractor expressly waives any claims, including without limitation due process claims that may otherwise be available under the law in the event of any dispute involving these terms of use.

- g. The Contractor shall furnish to the DGS COSTARS Program Office a quarterly electronic Contract sales report detailing the previous quarter's Contract purchasing activity, using the form and in the format prescribed by DGS. The Contractor shall submit its completed quarterly report no later than the fifteenth calendar day of the succeeding Contract quarter.
 1. The Contractor shall submit the reports through the web-based COSTARS Contractors' Gateway of the PA Contractor Portal at <https://paContractorportal.state.pa.us/irj/portal/anonymous> , Enterprise Applications. If a Contractor does not have access to the Internet, the Contractor shall send the reports, using the form and in the format prescribed by DGS, on compact disc via US Postal Service to the DGS COSTARS Program Office, Bureau of Procurement, 1800 Herr Street, 2nd Floor, Arsenal Building, Harrisburg, PA 17103.
 2. For each PO received, the Contractor shall include on the report the name and address of each COSTARS-Registered Purchaser that has used the Contract along with the sales date, and dollar volume of sales to the specific Purchaser for the reporting period.
 3. DGS may suspend the Contractor's participation in the COSTARS Program for failure to provide the Quarterly Sales Report within the specified time.

- h. Additional information regarding the COSTARS Program is available on the DGS COSTARS Website at www.costars.state.pa.us.

1. If the Contractor is aware of any qualified entity not currently registered and wishing to participate in the COSTARS Program, please refer the potential purchaser to the DGS COSTARS Website at www.costars.state.pa.us, where it may register by completing the online registration form and receiving DGS confirmation of its registration. To view a list of currently-registered COSTARS member entities, please visit the COSTARS website.
2. Direct all questions concerning the COSTARS Program to:

Department of General Services
COSTARS Program
1800 Herr St, 2nd Fl., Arsenal Bldg.
Harrisburg, PA 17103 Telephone:
1-866-768-7827
E-mail GS-PACostars@pa.gov

- i. **COSTARS Program Election to Participate.** If the Contractor is willing to sell the awarded items/services at the same prices and/or discounts, and in accordance with the contractual terms and conditions, to COSTARS members, the Contractor should complete and return the COSTARS Program Election to Participate form which is an attachment to this ITQ. If the Contractor is asserting that it is a Department of General Services Certified Small Business, the Contractor must submit its active certification.

E. COSTARS Reporting Requirements. If you checked “Yes” in Step 6 when developing your qualification bid for the ITQ contract, you agreed to participate in the Commonwealth’s COSTARS program, and you are bound by the COSTARS Purchasers Provision contained within this Statement of Work. The requirement to report COSTARS sales to DGS’ COSTARS Program Office is contained in Section E of the COSTARS Purchasers Provision. By agreeing to participate in the COSTARS program, you are required to report COSTARS sales to DGS on a quarterly basis. Even if you had no COSTARS sales, you must file a report.

COSTARS sales for the ITQ contract can now be reported through the automated COSTARS sales reporting system located on the COSTARS website. Information required will be your vendor number, contract number, date of sale, customer name and the amount of the sale. It is also recommended that you record the COSTARS Member ID number. Detailed instructions appear below.

The deadline for submitting sales information is the 15th day of the month following the end of the quarter. Failure to report COSTARS sales is in breach of contract, and may result in DGS suspending your participation in the COSTARS program.

Note: This system is to be used to record sales to COSTARS members ONLY! ZERO sales for a particular quarter must also be reported.

INSTRUCTIONS FOR COSTARS SALES REPORTING FOR STATEWIDE CONTRACT CONTRACTORS

- Go to www.dgs.state.pa.us/costars. ‘Click’ on the Contractors button.
- ‘Click’ on the COSTARS Contractors’ Gateway link on the right. Click on the State Contract link.
- Enter your Vendor Number to gain access to the system. When your Vendor Number is found, you will be taken to the Sales Reporting Authorization screen.
- Enter your first and last name. ‘Click’ Continue.

- You will be taken to the Sales Reporting Screen. Select from the Contract Number dropdown the Contract Number you want to report sales for and then ‘click’ the Continue button located next to it.
- To enter a new Sale or to report “No Sales this Quarter”, ‘click’ on the Insert button at the top left.
- Enter the Customer Name or part of the Customer Name into the Customer Search field. If you are reporting “NO SALES THIS QUARTER”, type NO SALES into the search field. ‘Click’ the Search button.
- Select the Customer Name from the dropdown list, or select NO SALES THIS QUARTER. To proceed, you will need to ‘click’ on the Continue button to the right of the list. The system will locate the Customer Name in the Members database and will pre-fill the Address and County fields for you.
- You will then enter a Sales Date and Sales Amount.
- ‘Click’ on the Save button. The data is saved and immediately accessible by COSTARS Program staff. For your convenience, there is also a Sales Reporting Manual – for Statewide Contracts in the Resource Center on this site. For additional assistance or questions, please call 1-866-768-7827.

F. Post-Submission Descriptive Literature. The Commonwealth may, during its evaluation of the bids, require any Contractor to submit cuts, illustrations, drawings, prints, test data sheets, specification sheets and brochures which detail construction features, design, components, materials used, applicable dimensions and any other pertinent information which the Issuing Office may require in order to evaluate the product(s) offered. The required information must be submitted within two (2) business days after notification from the Issuing Office. Failure to submit the required information prior to the expiration of the second business day after notification shall result in the rejection of the bid as non-responsive.

G. Tie Bids/Quotes. All tie bids/quotes will be broken by the Issuing Office.

H. Prompt Payment Discounts. Prompt payment discounts will not be considered in making an award. If prompt payment discounts are offered by any Contractor, however, the Issuing Office will take advantage of such offer.

I. Supplier Representations & Authorization: Each supplier by completing and submitting its proposal understands, represents, and acknowledges that:

- The supplier has read and understands the terms and conditions of this ITQ.
- The Asphalt Material offered will be in conformance with the specifications and requirements referenced in this ITQ without exceptions.
- You agree that your proposal will remain valid during the entire contract period.
- You agree that, unless your proposal arrives by close of business on January 1, 2021, it may not be considered for the full contract period beginning on or about March 1, 2021.
- You agree that you must maintain your status as an approved supplier in order to remain eligible to receive an RFQ.
- You agree that it is your sole responsibility to maintain and update when necessary all contact information especially a valid e-mail address for the ITQ on file with DGS.

REQUEST FOR QUOTES (RFQ) PROCEDURES: Commonwealth Agencies will issue an RFQ to qualified Contractors, through the Commonwealth’s Custom Portal, powered by the JAGGAER system. Contractors will respond to the RFQ in the system. The requesting Agencies may require the qualified Contractors to furnish, upon request, additional documentation in the RFQ. The qualified Contractors selected for the RFQ process will receive a PO and will supply the service to meet the specific requirements as indicated in the RFQ.

The RFQ may include, but not be limited to, the type of material, quantity, delivery location or source pickup, end date of the PO, other special terms, conditions and specifications, and bid response requirements. Requests for quotes may be issued on a limited, as-needed basis using an alternative method identified by the Commonwealth, which may include mail, facsimile or electronic mail.

QUOTE/BID: Suppliers must submit quotes by the date and time and via the method specified in each RFQ to be considered for award. All quoted prices will remain firm for, at minimum, the time period identified in the RFQ, unless a price adjustment has been identified within the RFQ. Quotes must be prepared and submitted in accordance with the specifications of the RFQ, if any. Quoted prices must be inclusive of all transportation, delivery, handling charges, fees, overhead, profit and any applicable taxes, etc.

AWARD: Agencies will exercise a scoring method based upon the criteria set forth in the RFQ. The Scoring Methods are defined as follows:

- Best Value
 - o Refers to the process of selecting the quote which provides the greatest value to the agency based on evaluating and comparing all pertinent criteria, including cost, so that the Contractor whose overall proposal best suits the agency’s needs is selected for each individual project; and
- Low Cost
 - o Refers to the lowest cost quoted from all proposals received that are deemed both responsive and responsible for the project.

If more than one type of material is used on the same jobsite, total costs of all combined Asphalt Materials may be a factor in determining which contract supplier receives the award for a given job. Details of such transactions are the responsibility of the using agency, are on file with the agency that issued the RFQ and are subject to review by any awarded supplier.

Source Pick Up: Source pick up award is based on the cost per ton price that the Commonwealth will pay for Asphalt Materials purchased “FOB source of supply/loaded on Commonwealth trucks.”

The using agency will normally procure material from the source that represents the lowest responsible cost to the using agency after taking into consideration length of haul and dead haul. However, in some instances, the using agency may select the most economic source based upon other considerations such as, but not limited to, differences in haul time due to terrain or urban congestion; length of wait at the source; crew productivity based on truck availability and haul distance. Details of such transactions are the responsibility of the using agency, are on file with the agency that issued the RFQ and are subject to review by any awarded supplier.

The using agency may issue a PO for tonnage, to take on an uninterrupted basis to completion of the order, or a PO may be issued for tonnages to take over a period of time as a “blanket” PO.

Supplier(s) awarded a PO for source pickup of material shall ensure availability of materials for loading into Commonwealth vehicles within 24 hours after receipt of the PO (for 50 tons or less) and within the timeframe identified in the RFQ for orders which exceed 50 tons. When the supplier commits to provide material, the supplier will provide it no later than one (1) hour after the mutually agreed upon time. Commonwealth vehicles shall be served on a first-come, first serve basis.

FOB Destination: FOB Destination award is the total price per ton that the Commonwealth will pay for Asphalt Material to be delivered to a Commonwealth location (i.e. job site, stockpile, etc.). It shall be understood that for RFQs requesting materials for FOB Destination, all quoted prices shall include transportation costs for delivery.

For FOB Destination, if a supplier cannot or does not commence delivery at the established delivery time, the Commonwealth can terminate the award and issue the award to the next most economically feasible supplier available who responded to the applicable RFQ. If award is made to another supplier, immediate availability is a factor in the selection process, and the delinquent supplier is responsible for any excess cost to the Commonwealth. Continued failures may result in cancellation of the Contract.

Each RFQ and/or PO placed using either method specified above will be deemed to incorporate the terms and conditions set forth in this Contract. The Selected Supplier cannot initiate delivery until receipt of either a fully executed PO or agency authorization to charge the ordered material(s) to the appropriate Commonwealth Purchasing Card.