



Invitation for Bids

BID OPENING DATE: November 7, 2018 TIME: 11:00 A.M. EST INVITATION FOR BIDS NUMBER: 23146	TITLE: Group 02450 FRESH BREAD (Statewide) Classification Codes: 50
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CONTRACT PERIOD: 5 years, with option to renew up to 2 additional years

DESIGNATED CONTACTS: In accordance with the Procurement Lobbying Law [State Finance Law § 139-j(2)(a)], the following individuals are the Designated Contacts for this Solicitation. All questions relating to this Solicitation must be addressed to the Designated Contacts.

Email Address: Julie.Carlson@ogs.ny.gov

Julie Carlson Contract Management Specialist Telephone No. (518) 474-8077 E-mail address: Julie.Carlson@ogs.ny.gov	Jennifer Kuhn Team Leader Telephone No. (518) 473-3625 E-mail address: Jennifer.Kuhn@ogs.ny.gov
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Bidder's Federal Tax Identification Number: <i>(Do Not Use Social Security Number)</i>	NYS Vendor Identification Number: <i>(See New York State Vendor File Registration Clause)</i>
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Legal Business Name of Company Bidding:

D/B/A – Doing Business As (if applicable):

Street	City	State	County	Zip Code
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E-mail Address:	Company Web Site:
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If applicable, place an "x" in the appropriate box(es) *(check all that apply)*

<input type="checkbox"/> NYS Small Business # Employees	<input type="checkbox"/> Service Disabled Veteran Owned Business	<input type="checkbox"/> NYS Minority Owned Business	<input type="checkbox"/> NYS Women Owned Business
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If you are not bidding, place an "x" in the box and return this page only.

WE ARE NOT BIDDING AT THIS TIME BECAUSE:

FOR PROCUREMENT SERVICES USE ONLY

LITERATURE <input type="checkbox"/>	LETTER <input type="checkbox"/>	FLASH DRIVE <input type="checkbox"/>	OTHER <input type="checkbox"/>	# of Binders/Packages: _____
PURC. MEMO <input type="checkbox"/>	CD/DVD <input type="checkbox"/>	SDHC CARD <input type="checkbox"/>	_____	Documented by: _____

Bidder Certification and Affirmation

Bidder certifies and affirms as follows:

1. This Bid is an irrevocable offer for 60 days from the date of submission to the New York State (“NYS”) Office of General Services (“OGS”), or for such longer period as is set forth in the Invitation for Bids.
2. The Bidder can and will provide and make available, at a minimum, the Products, deliverables and/or services as described in the Invitation for Bids.
3. The Bidder has read and understands the provisions of the Invitation for Bids, and all appendices, attachments, and exhibits attached thereto, including Appendix A (Standard Clauses for New York State Contracts) (January 2014) and Appendix B (General Specifications) (April 2016).
4. The information contained in this Bid is complete, true, and accurate.
5. The Bidder understands and agrees to comply with the requirements of the Procurement Lobbying Law, State Finance Law § 139-j and § 139-k, and with OGS’s procedures relating to permissible contacts during a procurement as required by State Finance Law § 139-j(3) and § 139-j(6)(b). Such requirements and procedures are posted at https://ogs.ny.gov/aboutOgs/regulations/defaultSFL_139j-k.asp.

The signer affirms under penalties of perjury that he or she is duly authorized to legally bind the Bidder referenced above and that he or she signed this Bidder Certification as the legally binding act of the Bidder.

Print Full Bidder Entity Name

By: _____
Signature of Person Authorized to Legally Bind the Bidder

Print Name of Signatory

Print Title of Signatory

Date

RETURN THIS PAGE AS PART OF BID

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Appendix A (Standard Clauses for NYS Contracts) (January 2014)
Appendix B (General Specifications) (April 2016)

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- Attachment 2 – NYS Required Certifications
- Attachment 3 – Encouraging Use of NYS Businesses
- Attachment 4 – Insurance Requirements
- Attachment 5 – Bidder Information Questionnaire
- Attachment 6 – Bidder Submission Checklist
- Attachment 7 – Bidder Questions Form
- Attachment 8 – Report of Contract Usage
- Attachment 9 – Supplier/Manufacturer’s Certificate
- Attachment 10 – Contractor/Reseller/Distributor Information Sheet

1. INTRODUCTION

1.1 Overview

This Solicitation is issued by the New York State (“NYS”) Office of General Services (“OGS”), Procurement Services for Fresh Bread as specified herein for all Authorized Users eligible to purchase through this Solicitation.

It is the intent of OGS to award a single contract in each of four Regions as described in Section 1.2, Scope.

This Solicitation outlines the terms and conditions and all applicable information required for submitting a Bid. Bidders should pay strict attention to the Bid submission date and time to prevent disqualification. Bidders are strongly encouraged to read the language of this Solicitation thoroughly and to precisely follow the instructions included in the Solicitation and all attachments.

1.2 Scope

The scope of this award is limited to fresh baked bread products only; fresh bread and rolls including bread loaves, individual bread slices, hamburger rolls, frankfurter rolls, and dinner rolls.

Exclusions: Dessert products such as cookies, donuts, Danish pastries, cinnamon buns, cakes, and pies are excluded from the scope of this Solicitation and resulting contract award.

This Solicitation establishes four regions in the State as set forth below.

REGION	COUNTIES
Central	Broome, Cayuga, Chenango, Cortland, Delaware, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, Otsego, Saint Lawrence, Sullivan, Tioga, and Tompkins
Downstate	Bronx, Kings, Nassau, New York, Queens, Richmond, Rockland, Suffolk, and Westchester
Eastern	Albany, Clinton, Columbia, Dutchess, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Orange, Putnam, Rensselaer, Saratoga, Schenectady, Schoharie, Ulster, Warren, and Washington
Western	Allegany, Cattaraugus, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuylar, Seneca, Steuben, Wayne, Wyoming, and Yates

1.3 Estimated Quantities

The quantities or dollar values listed in this Solicitation are estimated only. A Contract resulting from this Solicitation shall be an estimated quantity Contract. No specific quantities are represented or guaranteed, and the State provides no guarantee of individual Authorized User participation. The Contractor must furnish all quantities actually ordered at or below the Contract prices. The anticipated dollar value of the award for this Solicitation, based on historical purchases under previous awards, is approximately \$5,500,000 annually. The individual value of each resultant Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered. Authorized Users will be encouraged to purchase from Contractors who offer the Products and pricing that best meet their needs in the most practical and economical manner. See Appendix B, *Estimated/Specific Quantity Contracts and Participation in Centralized Contracts*.

Numerous factors could cause the actual quantities of Products purchased under a Contract resulting from this Solicitation to vary substantially from the estimates in the Solicitation. Such factors include, but are not limited to, the following:

- Such Contracts may be non-exclusive Contracts.

- There is no guarantee of quantities to be purchased, nor is there any guarantee that demand will continue in any manner consistent with previous purchases.
- The individual value of each Contract is indeterminate and will depend upon actual Authorized User demand and actual quantities ordered during the contract period.
- The State reserves the right to terminate any Contract for cause or convenience prior to the end of the term pursuant to the terms and conditions of the Contract.
- Contract pricing that is lower than anticipated could result in a higher quantity of purchases by Authorized Users than anticipated.

Contract pricing that is higher than anticipated could result in a lower quantity of purchases by Authorized Users than anticipated.

By submitting a Bid, Bidder acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of the resulting Contracts could vary substantially from the estimates provided in this Solicitation.

1.4 Key Events/Dates

Event	Date	Time
Closing Date for Bidder Questions	October 9, 2018	5:00 PM ET
OGS Procurement Services’ Responses to Bidder Questions	October 23, 2018	N/A
Bid Opening / Due date for Bids	November 7, 2018	11:00 AM ET

1.5 Pre-Bid Conference

There is no pre-bid conference for this solicitation.

1.6 NYS Contract Reporter

Bidders must register with the New York State Contract Reporter (“NYSCR”) at <https://www.nyscr.ny.gov> in order to receive notifications about this Solicitation. Navigate to the “I want to find contracts to bid on” page to register for your free account. In order to receive e-mail notifications regarding updates to the content or status of a particular ad, you must “bookmark the ad” on the upper right hand side of the ad, then return to your Account, view your list of bookmarked ads, and then select “send me notification updates” option listed to the right of the ad. Answers to all questions of a substantive nature will be posted in the form of a question and answer document and released through the NYSCR. Any updates to Solicitation documents will also be posted and released through the NYSCR.

If you do not opt-in to receive notification updates regarding a particular ad, you will not receive e-mail notifications regarding updates, including e-mail notifications regarding the posting of the question and answer document and updates to Solicitation documents.

Be advised that submission of responses to the Solicitation that do not reflect and take into account updated information may result in your Bid being deemed non-responsive to the Solicitation.

1.7 Bidder Questions

All questions regarding this Solicitation should be submitted using Attachment 7 – Bidder Questions Form, citing the applicable Solicitation document name and document section. The completed form must be emailed to Julie.Carlson@ogs.ny.gov by the date and time indicated in the Key Events/Dates section. Questions submitted after the deadline indicated may not be answered. A Bidder is strongly encouraged to submit questions as soon as possible. Answers to all questions of a substantive nature will be provided to all prospective Bidders in the form of a question and answer document which will be posted to the OGS website and will not identify the Bidder asking the question. Notification of this posting will be advertised in the NYS Contract Reporter (“NYSCR”). Your company must select the “opt-in” option within the Contract Reporter ad to receive notification updates of this Solicitation.

If Bidder intends to submit a Bid that deviates from the requirements of the Solicitation in any way, the proposed deviations **must** be submitted during the *Questions* period so that they may be given due consideration prior to the submission of Bids. See *Bid Deviations* for additional information.

1.8 Summary of Policy and Prohibitions On Procurement Lobbying

Pursuant to State Finance Law § 139-j and § 139-k, this Solicitation includes and imposes certain restrictions on communications between OGS and a Bidder during the procurement process. A Bidder is restricted from making contacts from the earliest posting, on a governmental entity's website, in a newspaper of general circulation, or in the procurement opportunities newsletter of intent to solicit offers/Bids through final award and approval of the Procurement Contract by OGS and, if applicable, the Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law § 139-j(3)(a). Designated staff, as of the date hereof, are identified on the first page of this Solicitation. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Bidder pursuant to State Finance Law §139-j and §139-k. Certain findings of non-responsibility can result in rejection for Contract award and, in the event of two findings within a four-year period, the Bidder is debarred from obtaining governmental Procurement Contracts for four years. Further information about these requirements can be found on the OGS website at: <https://www.ogs.ny.gov/acpl/>

1.9 Definitions

Capitalized terms used in this Solicitation shall be defined in accordance with Appendix B, *Definitions*, or as below.

"Authorized User(s)" as defined in Appendix B.

"Bid Deviation" shall refer to any variance submitted or proposed by a Bidder, which deviates from, adds extraneous terms to, conflicts with or offers an alternative to any term, condition, specification or requirement of the Solicitation.

"Bidder" shall refer to any business entity who submits a response to this IFB. At the time that the Bidder executes a contract with the State, a Bidder shall become a "Contractor". See also "Contractor".

"Business Day" shall refer to Monday through Friday from 8:00 AM – 5:00 PM ET, excluding NYS Holidays and federal holidays.

"Contract" as defined in Appendix B.

"Contractor" shall refer to a responsive and responsible Bidder who has offered the lowest price for a Bid Section and is working under an executed contract with New York State. See also "Bidder".

"Invitation for Bids (IFB)" shall refer to this document, and its appendices and attachments.

"Market Basket" denotes the products selected for price evaluation.

"May" denotes the permissive in a contract clause or specification. "May" does not mean "required." Also see "Shall" and "Must".

"Must" denotes the imperative in a contract clause or specification. "Must" is synonymous with "required." Also see "Shall" and "May".

"MWBE" shall refer to a business certified with NYS Empire State Development ("ESD") as a Minority- and/or Women-owned Business Enterprise.

"NYS Holidays" refers to the legal holidays for State employees in the classified service of the executive branch, as more particularly specified on the website of the NYS Department of Civil Service. This includes the following: New Year's Day; Martin Luther King Day; Washington's Birthday (observed); Memorial Day; Independence Day; Labor Day; Columbus Day; Veteran's Day; Thanksgiving Day; and Christmas Day.

“**NYS Vendor ID**” shall mean the ten-character identifier issued by New York State when a vendor is registered on the Vendor File.

“**Preferred Source Products**” shall refer to those Products that have been approved in accordance with New York State Finance Law § 162.

“**Preferred Source Program**” shall refer to the special social and economic goals set by New York State in State Finance Law § 162 that require a governmental entity purchase select Products from designated organizations when the Products meet the “form, function and utility” requirements of the governmental entity. Under State Finance Law § 163, purchases of Products from Preferred Sources are given the highest priority and are exempt from the competitive bidding requirements. The New York State Preferred Sources include: The Correctional Industries Program of the Department of Corrections and Community Supervision (“Corcraft”); New York State Preferred Source Program for People Who Are Blind (“NYSPSP”); and the New York State Industries for the Disabled (“NYSID”). These requirements apply to state agencies, political subdivisions and public benefit corporations (including most public authorities).

“**Procurement Services**” shall refer to a business unit of OGS, formerly known as New York State Procurement (“NYSPRO”) and Procurement Services Group (“PSG”).

“**Regions**” for the purposes of this IFB, New York State is divided into four regions: Central, Downstate, Eastern and Western. Further details are set forth in Attachment 1 - Pricing.

“**SDVOB**” shall refer to a NYS-certified Service-Disabled Veteran-Owned Business.

“**Shall**” denotes the imperative in a contract clause or specification. “Shall” is synonymous with “required.” Also see “Must” and “May”.

1.10 Appendices and Attachments

The following appendices and attachments, attached hereto, are hereby expressly made a part of this Solicitation as fully as if set forth at length herein.

Appendix A (Standard Clauses for NYS Contracts)

Appendix B (General Specifications)

Attachment 1 – Pricing

Attachment 2 – NYS Required Certifications

Attachment 3 – Encouraging Use of NYS Businesses

Attachment 4 – Insurance Requirements

Attachment 5 – Bidder Information Questionnaire

Attachment 6 – Bidder Submission Checklist

Attachment 7 – Bidder Questions Form

Attachment 8 – Report of Contract Usage

Attachment 9 – Supplier/Manufacturer’s Certificate

Attachment 10 – Contractor/Reseller/Distributor Information Sheet

1.11 Conflict of Terms

Conflicts among the documents shall be resolved in the following order of precedence:

1. Appendix A (Standard Clauses for NYS Contracts);
2. The Solicitation;
3. Appendix B (General Specifications);
4. All other appendices and attachments to the Solicitation;

2. BIDDER QUALIFICATIONS

Bidder is advised that the State's intent in having the requirements listed below is to ensure that only qualified and reliable Contractors perform the work of the resulting Contract. Bidder shall have the burden of demonstrating to the satisfaction of Procurement Services that it can perform the work required. Procurement Services retains the right to request any additional information pertaining to the Bidder's ability, qualifications, financial capacity, financial stability, and procedures used to accomplish all work under the resulting Contract as it deems necessary to ensure safe and satisfactory work.

A Bidder shall meet the following qualifications. Failure to meet the qualifications will result in rejection of the bid.

1. Bidder must be:
 - a. A manufacturer, **or**
 - b. an authorized reseller or distributor of a manufacturer for the Products they are offering under this IFB.

Any reseller or distributor submitting a Bid hereby guarantees that:

- i. it is an authorized reseller or distributor of a manufacturer's entire Product Line, and
 - ii. the manufacturer has agreed to provide the Bidder with all quantities of Products required in fulfillment of its obligations under any resultant contract with the State, and must submit, with its bid, Attachment 9 – Supplier/Manufacturer's Certificate completed by the manufacturer acknowledging this level of support.
2. Bidder must have achieved minimum verifiable sales of Products described in Section 1.2, Scope, of \$250,000 cumulative total over the last three (3) years ending September 1, 2018 to any entity within the State of New York. Required proof of sales are to be demonstrated in an Excel spreadsheet that summarizes the total sales reported and includes purchasing entity's name, description of product purchased, total amount of sales for purchasing entity, date of purchase, and grand total of all sales. Sales made directly by the Manufacturer, Resellers, or a combination of both can be utilized to demonstrate compliance with this provision. Required proof of sales should be submitted at the time of Bid submission. Failure to submit proof of sales at the time of Bid submission may result in rejection of the Bid. OGS reserves the right to request additional documentation including copies of invoices/purchase orders/contracts, etc.
3. A Bidder shall provide evidence that it has maintained an organization capable of performing the work hereinafter described, in continuous operation for at least the three (3) years prior to the bid opening date. If this is not proven through the submission of a Dun & Bradstreet Business Information Report, then Bidder must provide alternative evidence that it meets this requirement.

2.1 Authorized Distributor

Bids will be accepted only from established manufacturers/bakeries/processors or their authorized dealers or distributors. Through completion and submission of the Supplier/Manufacturer's Certificate, the supplier or manufacturer guarantees that the Bidder is an authorized dealer and has agreed to supply the Bidder with all quantities of Products required by the Bidder in fulfillment of its obligations under any resultant Contract with the State. Bidders shall use the certificate attached to this Solicitation to document this level of support (see Attachment 9 – Supplier/Manufacturer's Certificate).

The Supplier/Manufacturer's Certificate is to be forwarded by the Bidder to its proposed supplier or manufacturer for completion and returned to the Bidder for inclusion with its Bid. The Commissioner reserves the right to investigate or make any inquiry into the capabilities of any Bidder to properly perform under any resultant Contract. See Appendix B, *Participation in Centralized Contracts and Employees, Subcontractors, and Agents*.

3. SPECIFICATIONS

3.1 General

Bidder and any of its participating branches, warehouses, distribution centers, etc., (hereafter "Bidder") must maintain a business establishment with access to adequate inventories of complete product lines for their awarded Region(s) as identified in Section 1.2, Scope, and must be capable of processing and shipping large numbers of consolidated orders to various destinations.

Bidder must be able to service all delivery locations in the awarded Region(s) in a timely and efficient manner and in accordance with the requirements of this solicitation.

The Bidder must be responsible for administering contract, resolving problems, etc., for all participating branches/warehouses/distribution centers, etc.

OGS's interpretation of specifications shall be final and binding upon the Contractor.

3.2 Fresh Bread – Detailed Product Specifications

Bread and rolls are to be fresh, not frozen. Products shall be of standard production as normally provided to commercial or retail trade. Loaves, hamburger rolls, frankfurter rolls, etc., shall come pre-sliced. Dinner rolls shall not be sliced. Dinner rolls shall be "soft" and may be either "cluster"/pull apart or individual type. The specific products listed serve as the baseline for specification

3.3 Mold, Bacteria, Etc.

Products shall adhere to industry and government standards for levels of mold, bacteria, etc.

3.4 Freshness Codes

Packaging shall contain an easily understood freshness code that contains the last date of use or sale, expressed in terms similar to "fresh thru", "use by", "for sale by" or some other logo easily read or understood by the general public.

3.5 Trans Fats

Any food item containing partially hydrogenated vegetable oil, shortening or margarine must contain less than .05 grams of trans fat per serving. Upon request of an Authorized User, and when available from a specification sheet, the actual amount of trans fat per 100 grams of product (0.1 gram increments) shall be provided to the requesting agency.

3.6 Kosher

All applicable products delivered shall be Kosher and "PARVE" (prepared without meat, milk, or their derivatives). All such products are to be free of pork and pork by-products. Only vegetable oils shall be used in the making of such products.

3.7 Shelf Life

All bread products are to be fresh and have a shelf life upon delivery of no less than 7 days. Bread products with a shelf life of less than 7 days, stale product, distressed product, damaged product, product removed from retail accounts, etc., are NOT acceptable.

3.8 FDA Nutrition Facts Label

Products delivered shall be in packages standard for retail trade and printed with the following information:

- FDA Nutritional Facts Label;
- Product Name;

- Weight of Product (please see below; Section 3.9, Dimensions and Weights);
- Freshness Codes (please see above; Section 3.4, Freshness Codes);
- An acceptable kosher designation, and the “PARVE” designation.

The quantity of an individual product packed in a bag or box shall not exceed the following:

PRODUCT	MAXIMUM NUMBER
Sliced Loaf Bread	1 Loaf per bag
Rolls	48 per bag

The size used for pro-rating for different types of baked goods is as follows:

PRODUCT	BASIS FOR PRO-RATING
Bread, Loaf White	26 usable slices (Note: Usable slices do not include heels)
Bread, Loaf 100% Wheat	22 usable slices
Individually Wrapped Slices	100 slices
Rolls	16 count
Raisin Bread	18 ounces

3.9 Dimensions and Weights

Each serving slice of loaf bread and each serving unit of rolls shall be uniform in appearance and size.

Weight of the product offered shall be equal to or greater than the minimum weights given below. Weights shall be evaluated by using the Nutrition Facts product information provided for the products bid.

PRODUCT	Minimum Weight
Bread, slice (Not 100% Whole Wheat)	22 grams per slice
Bread, slice (100% Whole Wheat)	26 grams per slice
Frankfurter and Hamburger Rolls	38 grams each roll
Dinner Roll	30 grams each roll

The State intends to use the information stated on the “FDA Nutrition Facts” label provided by the Bidder’s bakery on the bread products as required by the FDA. The weight for a slice of bread may be determined by dividing the total net weight by the number of servings and then by the number of slices for a serving, rounded to nearest tenth for the final result. For example, the slice weight for a loaf of bread with 794 grams total net weight, 28 servings per loaf and 1 slice per serving, would be calculated as follows:

$$\begin{aligned}
 \text{Slice weight} &= 794/28 \\
 &= 28.357/1 \\
 &= 28.357 \\
 &= 28.4 \text{ grams}
 \end{aligned}$$

If it becomes apparent that information in the “FDA Nutrition Facts” label furnished by a Bidder is incorrect, the State may reject the bid or the State may use information from other sources or by other means to determine slice weight, unit weight, ingredients, etc., for products offered.

SLICED BREAD, whether in loaf or individually wrapped, shall be a minimum of 3.75” high x 3.75” wide; and a minimum of 7/16” (.4375”) thick. Usable slices do not include heels. MAXIMUM WEIGHT of a loaf of bread shall not exceed 1,133 grams.

3.10 Flour

Enriched flour shall be used for all breads and rolls except for whole wheat products or unless otherwise specified. (Please see more on Whole Wheat bread products in next paragraph below.)

Whole Wheat bread products shall contain whole wheat flour; enriched wheat flour may be used in combination with whole wheat flour provided the whole wheat flour is the first ingredient on the FDA Nutrition Fact label. Whole Wheat bread products may contain wheat gluten and bran, as well as smaller amounts of other types of grain flours used in the baking industry, such as soy. Whole wheat bread products shall contain:

- Minimum of 2 grams of dietary fiber per slice
- 10-18 grams of total carbohydrates per slice
- Maximum of 2 grams of sugar per slice

3.11 Quality Control and Safety

Bidder shall have a written quality control program readily available for submission to OGS upon request that ensures all products are handled in a manner that complies with all Hazard Analysis & Critical Control Points (HACCP) regulatory requirements as well as NYS Circular 933 Good Manufacturing Practices (GMP) a copy of which is available at:<http://www.agriculture.ny.gov/FS/industry/04circs/goodmanufpracticesCIR933.htm>, and Sanitation Standard Operating Procedures (SSOP) which can be found here:
http://www.fsis.usda.gov/PDF/SSOP_module.pdf

Bidder shall verify that all manufacturers supplying product have verifiable HACCP programs in place at their manufacturing facilities.

Bidder must provide a recent (less than 12 months prior to bid opening) New York State Department of Agriculture and Markets inspection report (or acceptable equivalent as determined by OGS) with bid submission or shortly thereafter, for each distribution center used for bid.

4. BID SUBMISSION

4.1 Performance and Bid Bonds

There are no bonds for this Contract. The Commissioner of OGS has determined that no performance, payment or Bid bond, or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Contract is required at any time during the term of the resulting Contract.

4.2 NYS Vendor File Registration

Prior to being awarded a Contract pursuant to this Solicitation, the Bidder and any authorized resellers who accept payment directly from the State, must be registered in the New York State Vendor File (Vendor File) administered by the Office of the State Comptroller (OSC). This is a central registry for all vendors who do business with New York State Agencies and the registration must be initiated by a State Agency. Following the initial registration, a unique New York State ten-digit vendor identification number (Vendor ID) will be assigned to your company and to each of your authorized resellers (if any) for use on all future transactions with New York State. Additionally, the Vendor File enables a vendor to use the Vendor Self-Service application to manage all vendor information in one central location for all transactions related to the State of New York.

If Bidder is already registered in the New York State Vendor File, the Bidder must enter its Vendor ID on the first page of this Solicitation. Authorized resellers already registered should list the Vendor ID number along with the authorized reseller information. (The Vendor ID number is not the same as a SOCIAL SECURITY NUMBER or a TIN/FEIN number.)

If the Bidder is not currently registered in the Vendor File, the Bidder must request assignment of a Vendor ID from OGS. Bidder must complete the OSC Substitute W-9 Form (http://www.osc.state.ny.us/vendors/forms/ac3237s_fe.pdf) and submit the form to OGS in advance of Bid submission. Please send this document to the Designated Contact identified in the Solicitation. In addition, if an authorized reseller is to be used that does not have a Vendor ID, an OSC Substitute W-9 form should be completed by each authorized reseller and submitted to OGS. OGS will initiate the vendor registration process for all Bidders and authorized resellers. Once the process is initiated, registrants will receive an e-mail identifying their Vendor ID and instructions on how to enroll in the online Vendor Self-Service application.

For more information on the Vendor File please visit the following website:
http://www.osc.state.ny.us/vendor_management

4.3 Format of Bid Submission

The complete Bid package must be received by OGS Procurement Services by the date and time of the Bid opening. Late Bids shall be handled in accordance with Appendix B, *Late Bids*. Any Bid pricing or portions thereof submitted on CD or flash drive that are incomplete or that cannot be opened/accessed may be rejected. With respect to any Bid documents in Excel format, only those cells provided for entering Bid pricing and information are to be accessed by the Bidder.

Failure to submit Attachment 1 - Pricing will result in disqualification.

E-mail or facsimile Bid submissions are not acceptable.

It is recommended that the Bidder open, review and save/download all electronic files to the Bidder's hard drive and/or to a secure back-up location. Only completed files (in the specified format) should be saved to a CD or flash drive for submittal.

Bidders are responsible for the accuracy of their Bids. All Bidders are directed to take extreme care in developing their Bids. Bidders are cautioned to carefully review their Bids prior to Bid submission. A Bid that fails to conform to the requirements of the Solicitation may be considered non-responsive and may be rejected.

4.4 Content

A complete Bid consists of the following:

1. TWO separate electronic copies (CD or flash drive) containing:
 - a. Pages 1 and 2 of the Solicitation (signed and scanned) (PDF);
 - b. Completed Attachment 1 – Pricing (must be submitted as an Excel file);
 - c. Completed Attachment 2 – NYS Required Certifications with original ink signatures (PDF);
 - d. Completed Attachment 3 – Encouraging Use of NYS Businesses (PDF);
 - e. Proof of compliance with Attachment 4 – Insurance Requirements (PDF);
 - f. Completed Attachment 5 – Bidder Information Questionnaire (Excel);
 - g. Completed Attachment 6 – Bidder Submission Checklist (Excel);
 - h. Completed Attachment 9 – Supplier/Manufacturer's Certificate
 - i. Completed Attachment 10 – Contractor/Reseller/Distributor Information Sheet
 - j. Completed ST-220CA, Contractor Certification, notarized with original ink signatures (PDF);
 - k. Completed Form EEO100, Equal Employment Opportunity Staffing Plan (PDF);
 - l. Standard Vendor Responsibility Questionnaire (completed and scanned to PDF) or Certification that Questionnaire has been completed online (PDF).
 - m. Proof of Past Sales (Excel) as specified in Section 2, Bidder Qualifications
 - n. Proof of compliance with Section 3.11, Quality Control and Safety

2. ONE original paper version of each of the following (to be placed in a loose-leaf binder and tabbed):
 - a. Pages 1 and 2 of the Solicitation with original ink signatures;
 - b. Completed Attachment 2 – NYS Required Certifications with original ink signatures;
 - c. Completed Attachment 3 – Encouraging Use of NYS Businesses;
 - d. Proof of compliance with Attachment 4 – Insurance Requirements;
 - e. Completed Attachment 5 – Bidder Information Questionnaire;
 - f. Completed Attachment 6 – Bidder Submission Checklist;
 - g. Completed Attachment 9 – Supplier/Manufacturer's Certificate
 - h. Completed Attachment 10 – Contractor/Reseller/Distributor Information Sheet
 - i. Completed ST-220CA, Contractor Certification, notarized with original ink signatures;
 - j. Completed Form EEO100, Equal Employment Opportunity Staffing Plan;
 - k. Standard Vendor Responsibility Questionnaire (completed and signed) or Certification that Questionnaire has been completed online.
 - l. Proof of compliance with Section 3.11, Quality Control and Safety

Also, please note that in the case of discrepancies between paper copies and CD or flash drive submissions of the documents required in both formats, the electronic (CD or flash drive) copy shall take precedence over the paper copy.

A Bidder should note that any indicators or messages that have been built into the attachments are informational only and provided solely for the purpose of assisting Bidders in completing the attachments. The presence or absence of notes or indicators is not a determination by the State as to the sufficiency of the attachments with respect to the Solicitation requirements. Bidders remain responsible for reviewing the attachments to ensure compliance with the Solicitation requirements.

4.5 Bid Envelopes and Packages

All Bids should have a label on the outside of the envelope or package itemizing the following information:

1. BID ENCLOSED (preferably bold, large print, all capital letters)
2. Solicitation number (IFB #23146)
3. Bid Opening Date and Time
4. The number of boxes or packages (e.g., 1 of 2; 2 of 2)

Failure to complete all information on the Bid envelope and/or package may necessitate the opening of the Bid prior to the scheduled Bid opening.

4.6 Bid Delivery

Bids shall be delivered to the following address on or before 11:00 a.m. ET, on or before the Bid opening date as stated in Section 1.4, Key Events/Dates:

State of New York Executive Department
Office of General Services
Procurement Services
Corning Tower - 38th Floor Reception Desk
Empire State Plaza
Albany, NY 12242

Bidder assumes all risks for timely, properly submitted deliveries. The time of Bid receipt is determined by OGS according to the clock at the above-noted location. A Bidder is strongly encouraged to arrange for delivery of Bids to OGS prior to the date of the Bid opening. Late Bids shall be rejected, except as provided in Appendix B, *Late Bids*. All Bids and accompanying documentation shall become the property of the State of New York and shall not be returned.

4.7 Important Building Access Procedures

To access the Corning Tower, all visitors must check in by presenting photo identification at the information desk. Delays may occur due to a high volume of visitors. Visitors conducting Procurement Services business are encouraged to pre-register for building access by contacting the Procurement Services receptionist at (518) 474-6262 at least 24 hours prior to the visit. Visitors who are not pre-registered will be directed to a designated phone to call the Procurement Services receptionist. The receptionist will register the visitor at that time but delays may occur. Building access procedures may change or be modified at any time.

4.8 NYS Required Certifications

A Bidder is required to submit the signed New York State Required Certifications (Attachment 2 – NYS Required Certifications) with its Bid.

4.9 Supplier/Manufacturer's Certificate

Bids will be accepted only from established manufacturers/bakeries/processors or their authorized dealers or distributors. Through completion and submission of the Supplier/Manufacturer's Certificate, the supplier or manufacturer guarantees that the Bidder is an authorized dealer and has agreed to supply the Bidder with all quantities of Products required by the Bidder in fulfillment of its obligations under any resultant Contract with the State. Bidders shall use the certificate attached to this Solicitation to document this level of support (see Attachment 9 – Supplier/Manufacturer's Certificate).

The Supplier/Manufacturer's Certificate is to be forwarded by the Bidder to its proposed supplier or manufacturer for completion, and returned to the Bidder for inclusion with its Bid. The Commissioner reserves the right to investigate or make any inquiry into the capabilities of any Bidder to properly perform under any resultant Contract. See Appendix B, *Participation in Centralized Contracts and Employees, Subcontractors, and Agents*.

4.10 Bid Deviations

Bids must conform to the terms set forth in the Solicitation. As set forth in Bidder Questions, if Bidder intends to submit a Bid that deviates from the requirements of the Solicitation in any way, the proposed deviations must be submitted during the Questions period so that they may be given due consideration prior to the submission of Bids. Proposed deviations not submitted during the Questions period **will not be considered**. Material deviations (including additional, inconsistent, conflicting, or alternative terms) submitted with the Bid may render the Bid non-responsive and may result in rejection of the Bid.

Bidder is advised that OGS will not entertain any exceptions to Appendix A (Standard Clauses for NYS Contracts). OGS will also not entertain exceptions to the Solicitation or Appendix B (General Specifications) that are of a material and substantive nature.

Extraneous terms submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, license agreements, contracts or other documents) that are attached or referenced with submissions shall not be considered part of the Bid or resulting Contract, but shall be deemed included for informational or promotional purposes only.

4.11 Electronic Bid Opening Results

OGS Procurement Services posts Bid information on the OGS Procurement Services web page. The web page makes available the list of bidders that responded to the Solicitation. Such information is anticipated to be available online within two business days after the Bid opening.

The Bid Opening Results Page is available at: <https://nyspro.ogs.ny.gov/nyspro-bid-openings> .

4.12 Bid Liability

The State of New York will not be held liable for any cost incurred by the Contractor for work performed in the production of a Bid or for any work performed prior to the formal execution of a Contract.

4.13 Firm Offer

Bids must remain an effective offer, firm and irrevocable, for at least 90 calendar days from the due date, unless the time for awarding the Contract is extended by mutual consent of OGS and the Bidder. A Bid shall continue to remain an effective offer, firm and irrevocable, subsequent to such 90 calendar-day period until either tentative award of the Contract by OGS is made or withdrawal of the Bid in writing by the Bidder.

4.14 NYS Reserved Rights

New York State reserves the right, in its sole discretion, to:

- A. Reject any or all Bids received in response to the Solicitation;
- B. Withdraw the Solicitation at any time at the sole discretion of the State;
- C. Make an award under the Solicitation in whole or in part;
- D. Disqualify any Bidder whose conduct and/or Bid fails to conform to the requirements of the Solicitation;

- E. Seek clarifications and revisions of the Bid;
- F. Amend the Solicitation prior to the Bid opening to correct errors or oversights, or to supply additional information as it becomes available;
- G. Direct Bidders, prior to the Bid opening, to submit Bid modifications addressing subsequent Solicitation amendments;
- H. Change any of the schedule dates with notification through the NYS Contract Reporter;
- I. Eliminate any mandatory, non-material requirements that cannot be complied with by all of the prospective Bidders;
- J. Waive any requirements that are not material;
- K. Utilize any and all ideas submitted in the Bids received;
- L. Adopt all or any part of a Bidder's Bid in selecting the optimum configuration;
- M. Negotiate with a Bidder within the Solicitation requirements to serve the best interests of the State. This includes requesting clarifications of any or all Bids;
- N. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Bidder's Bid and/or to determine a Bidder's compliance with the requirements of the Solicitation;
- O. Select and award the Contract to other than the selected Bidder in the event of unsuccessful negotiations or in other specified circumstances as detailed in the Solicitation;
- P. Accept and consider for Contract Award Bids with non-material Bid Deviations or non-material Bid defects such as errors, technicalities, irregularities, or omissions;
- Q. Use any information which OGS obtains or receives from any source and determines relevant, in OGS's sole discretion, for the purposes of bid evaluation and Contractor selection;
- R. Consider a proper alternative where an evidently incorrect reference/parameter/component/product/model/code number is stated by the State or the Bidder;
- S. Reject an obviously unbalanced Bid as determined by the State; and
- T. Conduct Contract negotiations with -the next responsible Bidder, should the Agency be unsuccessful in negotiating with the selected Bidder;
- U. Make no award for any Product, region, or lot, as applicable, for reasons including, but not limited to, unbalanced, unrealistic or excessive Bidder pricing, a change in Authorized User requirements and/or Products, or an error in the Solicitation (e.g., use of incorrect reference, pack size, description, etc.). In such case, evaluation and ranking of Bids may be made on the remaining Products, regions, or lots.
- V. Offer a Bidder the opportunity to provide supplemental information or clarify its Bid, including the opportunity to explain or justify the balance, realism, and/or reasonableness of its pricing.
- W. Award Contracts on a rolling or staggered start basis, either in whole or in part. Contracts awarded in this method shall be coterminous with the first Contract awarded as a result of this Solicitation.

4.15 Incorporation

Portions of the successful Bidder's Bid and of this Solicitation shall be incorporated into a final Contract, with a separate document executed by Contractor and OGS. A final Contract will be formalized either through a separate contract document or through a contract award letter incorporating the Bid, each having its own provision governing conflict of terms.

5. METHOD OF AWARD

5.1 Method of Award

Award shall be made per Region to the responsive and responsible bidder offering the lowest grand total bid for the market basket in that Region.

Bidder must bid on ALL items in the market basket for each Region bid, and must be capable of supplying to all Authorized Users/locations within a Region.

Bidder may bid on one or more Regions. and may be awarded one or more Regions. In the case where a Bidder is the lowest responsive and responsible bidder in more than one Region, a single contract will be issued which includes terms for all awarded Regions.

5.2 Notification of Award

Tentative award of the Contract shall consist of written notice to that effect by OGS to a selected Bidder, who shall execute a Contract upon a determination by OGS that the Bidder is responsive and responsible.

Non-awardees will also be notified that their Bid was not selected for award.

6. TERMS AND CONDITIONS

6.1 Contract Term and Extensions

The Contract will be in effect for a term of up to five (5) years. The Contract term shall commence after all necessary approvals and shall become effective upon mailing or electronic communication of the final executed documents to the Contractor (see Appendix B, *Contract Creation/Execution*).

All OGS Centralized Contracts resulting from this Solicitation shall have a co-terminus end date. At the State's option, the Contract may be extended for up to two (2) years, in increments as deemed to be in the best interest of the State. Whether the optional extensions are exercised is at the sole discretion of the State. A Contractor shall retain the right to decline a Contract extension offered under this section. Any Contract extension will be under the same terms and conditions, subject to any additional applicable statutory and policy requirements. Any extensions provided under this section shall apply in addition to any rights set forth in Appendix B, *Contract Term – Extension*.

The Contract term provided for in this section shall extend 6 months beyond its termination date only for Authorized Users whose contracts must be registered with the Office of the New York City Comptroller. During the 6-month period the definition of Authorized User shall be deemed to refer only to Authorized Users whose contracts must be registered with the Office of the New York City Comptroller. This extension is in addition to any other extensions available under the Contract. The extension provided for in this paragraph shall be upon the then-existing terms and conditions; provided, however, during such extension an Authorized User, as defined in this paragraph, may agree to amend such terms and conditions solely to comply with changes in statutory requirements (e.g. changes in minimum, prevailing or living wages, or regulated services).

6.2 Short term Extension

This section shall apply in addition to any rights set forth in Appendix B, *Contract Term – Extension*. In the event a replacement Contract has not been issued, any Contract let and awarded hereunder by the State may be extended unilaterally by the State for an additional period of up to 30 calendar days upon notice to the Contractor with the same terms and conditions as the original Contract and any approved modifications. With the concurrence of the Contractor, the extension may be for a period of up to 90 calendar days in lieu of 30 calendar days. However, this extension automatically terminates should a replacement Contract be issued in the interim.

6.3 Price

Pricing will be collected using Attachment 1 – Pricing in accordance with the Instructions tab listed within Attachment 1 - Pricing.

6.4 Price Updates

Contractor may update their pricelist on a quarterly basis, or at any time at the request of OGS Procurement Services, as follows:

Pricing will be updated quarterly, in accordance with the PPI based on the PPI for "Bread & bakery product mfg.", Not Seasonally Adjusted (Series ID: PCU31181) as published by the US Department of Labor, Bureau of Labor Statistics, Washington D. C. 20212. The price adjustment is to be calculated by taking the most recent PPI value in effect for the month of October of the year under consideration, dividing that value by the PPI value for September 2017 (September 2017 shall be the "base" month and year to be used for all calculations), rounding the

quotient to the third decimal place, multiplying the quotient times the originally awarded bid price, and rounding the price to two decimal places.

An example of a price adjustment calculation for a requested price adjustment effective January 1, 2019 follows. **(All figures used are for illustrative purposes only.)**

Original Bread Price per Loaf:	\$0.75
PPI (PCU31181) October 2018	208.3
PPI (PCU31181) September 2017	199.7
October 2008 divided by September 2017	$208.3 / 199.7 = 1.043$
Quotient multiplied times Original Price:	$\$0.75 \text{ times } 1.043 = \$0.782 = \$0.78$
New price effective January 1, 2019:	\$0.78

All original contract prices in this example would be multiplied by 1.043 with the results rounded to the nearest two decimal places.

PPI indices are available through the internet at the Bureau of Labor Statistics (BLS) website at "www.bls.gov.com". If at any time, a series ID is discontinued or not available, the State reserves the right to implement another applicable index.

Pricelist Format

Contractor is required to submit Contract pricelist updates electronically in an unprotected Microsoft Excel (2016 or lower version) spreadsheet either on CD or thumb drive or via e-mail to the OGS Procurement Services contract administrator. The pricelist must be dated and the format shall be consistent with the format of the Contractor's approved Contract pricelist. The pricelist shall separately include and identify (e.g., by use of separate worksheets or by using highlighting, italics, bold and/or color fonts):

- Price increases;
- Price decreases;
- Products being added; and
- Products being deleted.

Contractor's Submission of Contract Updates

In connection with any Contract pricelist update, OGS reserves the right to:

- Request additional information;
- Reject Contract updates;
- Remove Products from Contracts;
- Remove Products from Contract updates; and
- Request additional discounts for new or existing Products.

6.5 Best Pricing Offer

During the Contract term, if the Commissioner becomes aware that the Contractor is selling substantially the same or a smaller quantity of a Product outside of this Contract upon the same or similar terms and conditions as that of this Contract at a lower price to a federal, state or local governmental entity, the price under this Contract, after consultation with the Contractor, may be reduced to a lower price on a prospective basis at the discretion of the Commissioner. The Commissioner reserves the right to request information to verify pricing for the purposes of this clause.

6.6 Price Structure

If, during the Contract Term, the Contractor is unable or unwilling to meet contractual requirements in whole or in part based on the price structure of the Contract, it shall immediately notify the Office of General Services, Procurement Services in writing. Such notification shall not relieve the Contractor of its responsibilities under the

Contract. The State may, but is not required to, consider an equitable adjustment in the Contract terms and/or pricing in the circumstances outlined in Appendix B, *Savings/Force Majeure*.

Should the Commissioner in his or her sole discretion determine during the Contract Term that (i) the Contract price structure is unworkable, detrimental, or injurious to the State, or (ii) the Contract price structure results in prices which are unreasonable, excessive, or not truly reflective of current market conditions, and no adjustment in the Contract terms and/or pricing is mutually agreeable, the State may terminate the Contract upon 10 business days written notice mailed to the Contractor.

6.7 Ordering

Purchase Orders shall be made in accordance with the terms set forth in Appendix B, *Purchase Orders*. Authorized Users may submit orders over the phone, and, if available, may submit orders electronically via web-based ordering, e-mail, or facsimile at any time. Orders submitted shall be deemed received by Contractor on the date submitted.

All orders shall reference Contract number, requisition, and/or Purchase Order number (if applicable). Upon Contractor's receipt of an order, confirmation is to be provided to the Authorized User electronically or via facsimile. Order confirmation should be sufficiently detailed, and include, at a minimum, purchase price, date of order, delivery information (if applicable), Authorized User name, and sales representative (if applicable).

6.8 Purchasing Card Orders

If the Contractor accepts orders using the State's Purchasing Card (see Appendix B, *Purchasing Card*), also referred to as the Procurement Card, the Contractor shall not charge or bill the Authorized User for any additional charges related to the use of the Purchasing Card, including but not limited to processing charges, surcharges or other fees.

6.9 Minimum Order

The minimum order for this Contract is \$50 for delivery to a single location. The \$50 minimum is for aggregate total of all products delivered; products may be on more than one purchase order; products may be on more than one invoice.

6.10 Invoicing and Payment

Invoicing and payment shall be made in accordance with the terms set forth in Appendix B, *Contract Invoicing*.

The Contractor is required to provide the Authorized User with one invoice for each Purchase Order at the time of delivery. The invoice must include detailed line item information to allow Authorized Users to verify that pricing at point of receipt matches the Contract price on the original date of order. At a minimum, the following fields must be included on each invoice:

- Contractor Name
- Contractor Billing Address
- Contractor Federal ID Number
- NYS Vendor ID Number
- Account Number
- NYS Contract Number
- Name of Authorized User indicated on the Purchase Order
- NYS Agency Unit ID (if applicable)
- Authorized User's Purchase Order Number
- Order Date
- Invoice Date
- Invoice Number
- Invoice Amount

- Product Descriptions
- Unit Price
- Quantity
- Unit of Measure
- Dates of Service (if applicable)

Cost centers or branch offices within an Authorized User may require separate invoicing as specified by each Authorized User. The Contractor's billing system shall be flexible enough to meet the needs of varying ordering systems in use by different Authorized Users. Visit the following link for further guidance for vendors on invoicing: <https://bsc.ogs.ny.gov/content/vendor-information> .

6.11 Product Delivery

Delivery is required within seven (7) calendar days unless otherwise arranged with Authorized User.

In cases, such as holidays, where products may have a longer than normal lead time, Contractor shall notify Authorized Users of the additional time needed to fill orders.

Contractor, directly or through its subcontractor, shall be able to deliver all items/products listed herein with evenly spaced deliveries, including weeks with legal holidays, to all Authorized Users on a consolidated basis. Delivery shall be made in accordance with instructions on the purchase order from each facility. Deliveries shall be on weekdays during normal business hours except/excluding legal holidays.

Some locations may accept Saturday delivery. Correctional facilities will not accept Saturday delivery. For some facilities, delivery may be required to more than one building. It is anticipated that most locations will require delivery to be made at least three alternate days each week (up to five consecutive days in some cases) generally between the hours of 7:00 a.m. and 11:00 a.m. ET.

NOTE: There are certain Authorized Users that require specific delivery schedules due to security concerns. The hours listed herein are "general" hours and it is expected that the resultant contractor and the Authorized Users will come to a mutual agreement on times and days for recurring delivery.

6.12 Restricted Delivery

Price includes "restricted" delivery. Some Authorized Users have "restricted" deliveries, which include restrictions around time or process for delivery. Delivery during certain hours or certain days may be required. Other restrictions may include, but are not limited to, thorough inspection of vehicle/trailer and necessary security clearances. It should be noted that correctional facilities may have "lock downs" during which time there is no exit or entry.

6.13 Smaller Vehicle Use for Delivery

Since many delivery sites are located in residential areas, it is anticipated local ordinances may restrict and/or prohibit the use of 40,000 pound vehicles. Consequently, Contractor shall make deliveries to these locations with smaller vehicles; 26,000 pound or smaller size vehicles. In such cases, it is not only a requirement to use smaller vehicles, but it also remains the Contractor's responsibility to determine and comply with local ordinances and requirements.

6.14 Fill Rate

Contractor certifies it will use commercially reasonable standards to provide the Authorized User with the requested product in the requested time frame on 98% of all orders.

6.15 Out of Stock/Not Available Product

To the maximum extent practicable, Contractor shall inform Authorized User of the availability date of non-filled and partial orders within 24 to 36 hours prior to scheduled delivery. In the event of out of stock/not available product situations, there shall be no substitution of products ordered without the express authorization of the Authorized User.

6.16 Product Returns and Exchanges

In addition to the provisions of Appendix B, *Title and Risk of Loss, Product Substitution, and Rejected Product*, Products returned or exchanged due to quality problems, duplicated shipments, outdated Product, incorrect Product shipped, Contractor errors otherwise not specified, or Products returned or exchanged due to Authorized User errors, shall be replaced with specified Products or the Authorized User shall be credited or refunded for the full purchase price.

Products shall be replaced within 7 business days of written notification to the Contractor of the Authorized User's intent to return or exchange the Product. Contractor can charge only a restocking fee for Product returned or exchanged due to Authorized User error that is determined not to be suitable for resale; the restocking fee cannot exceed the net price of the returned or exchanged Product.

Any credit or refund shall be applied against the next bill/invoice submitted by the Contractor to the Authorized User. If no credit or refund, or only a partial credit or refund, is made in such fashion, the Contractor shall pay to the Authorized User the amount of such credit or refund or portion thereof still outstanding, within 30 calendar days of demand.

6.17 Products Left on Dock

Deliveries left on the loading dock without acceptance by the Authorized User shall be considered "abandoned goods" and may be returned at the Contractor's expense or disposed of at the discretion of the Authorized User.

6.18 Recalled Products

The Bidder shall have the ability to track all products delivered. The Bidder shall have a product recall program that provides for immediate notification to all facilities including OGS and Authorized Users' central offices that have received the recalled products. The Bidder is responsible for picking up and replacing all products that are subject to recall, and insuring that all manufacturers and suppliers to the Bidder have the same requirements in place. The Authorized User shall not be responsible for the pickup and replacement cost of any recalled product. Subsequent credits must be applied, as applicable.

6.19 Pick-Up/Exchange of Bread Racks

Bread racks or other containers used by the Contractor for delivery of product to the Authorized User shall be returned or exchanged by the Contractor in a timely manner either at the time of delivery, on subsequent deliveries, or as arranged between the Contractor and the Authorized User.

6.20 Contract Administration

The Bidder shall provide a sufficient number of Customer Service employees who are knowledgeable and responsive to Authorized User needs and who can effectively service the Contract. Bidder shall also provide an Emergency Contact in the event of an emergency occurring after business hours or on weekend/holidays.

Bidder shall provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Information regarding the Customer Service, Emergency Contact, and Contract Administrator shall be set forth in Attachment 5 – Bidder Information Questionnaire. Contractor must notify OGS within five Business Days if its Contract Administrator, Emergency Contact, or Customer Service employees change, and provide an interim contact person until the position is filled. Changes shall be submitted electronically via e-mail to the OGS Contract Management Specialist.

6.21 NYS Financial System (SFS)

New York State is currently operating on an Enterprise Resource Planning (ERP) system, Oracle PeopleSoft software, referred to as the Statewide Financial System (SFS). SFS is currently on PeopleSoft Financials version 9.2. SFS supports requisition-to-payment processing and financial management functions.

The State is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure Products in SFS. This application provides catalog capabilities. Contractors with Centralized Contracts have the ability to provide a “hosted” or “punch-out” catalog that integrates with SFS and is available to Authorized Users via a centralized eMarketplace website. Additional information may be found at: <https://nyspro.ogs.ny.gov/content/nys-emarketplace-1>

There are no fees required for a Contractor’s participation in the catalog site development or management. Upon completion and activation of an on-line catalog, State Agencies will process their orders through the SFS functionality and other Authorized Users can access the catalog site to fulfill orders directly.

The State may be implementing additional PeopleSoft modules in the near future. Further information regarding business processes, interfaces, and file layouts currently in place may be found at: <http://www.sfs.ny.gov> and <http://www.osc.state.ny.us/agencies/guide/MyWebHelp/>.

6.22 Insurance

The Contractor shall maintain in force at all times during the terms of the Contract, policies of insurance pursuant to the requirements outlined in Attachment 4 – Insurance Requirements.

6.23 Report of Contract Usage

Contractor shall submit Attachment 8 – Report of Contract Usage including total sales to Authorized Users of this Contract by Contractor, and all authorized resellers, dealers and distributors, if any, no later than 10 days after the close of each calendar quarter. If the Contract period begins or ends in a fractional portion of a reporting period, only the actual Contract sales for this fractional period should be included in the quarterly report.

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

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

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

6.24 Contractor Requirements and Procedures for Participation by New York State Certified Minority- and Women-Owned Business Enterprises and Equal Employment Opportunities for Minority Group Members and Women

I. New York State Law

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

II. General Provisions

- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for MWBEs. Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, State, or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, a finding of non-responsibility, breach of contract, withholding of funds, suspension or termination of the Contract, and/or such other actions or enforcement proceedings as allowed by the Contract and applicable law.

III. Equal Employment Opportunity (EEO)

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

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

electronically to OGS at EEO_CentCon@ogs.ny.gov on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January.

2. Separate forms shall be completed by Contractor and all subcontractors.
 3. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.
- D. Contractor shall comply with the provisions of the Human Rights Law and all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal and conviction and prior arrest.

IV. Contract Goals

- A. For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers, or suppliers to Contractor. Contractor is, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.
- B. Good Faith Efforts

Pursuant to 5 NYCRR § 142.8, evidence of good faith efforts shall include, but not be limited to, the following:

1. A list of the general circulation, trade, and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers, copies of such solicitations, and any responses thereto.
2. A list of the certified MWBEs appearing in the Empire State Development ("ESD") MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with, or obtaining supplies from, certified MWBEs.
4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
5. Dates of any pre-bid, pre-award, or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
6. Other information deemed relevant to the request.

V. Fraud

Any suspicion of fraud, waste, or abuse involving the contracting or certification of MWBEs shall be immediately reported to ESD's Division of Minority and Women's Business Development at (855) 373-4692.

ALL FORMS ARE AVAILABLE AT: <http://www.ogs.ny.gov/MWBE/Forms.asp>

6.25 Participation Opportunities For New York State Certified Service-Disabled Veteran Owned Businesses

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"), thereby further integrating such businesses into New York State's economy. OGS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OGS contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders/Contractors are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Bidder/Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials. The directory of New York State Certified SDVOBs can be viewed at: <https://ogs.ny.gov/Veterans/default.asp>

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

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

6.26 Use of Recycled or Remanufactured Materials

New York State supports and encourages Contractors to use recycled, remanufactured or recovered materials in the manufacture of Products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product or packaging unless such use is precluded due to health or safety requirements or Product specifications contained herein. Refurbished or remanufactured components or Products are required to be restored to original performance and regulatory standards and functions and are required to meet all other requirements of this Solicitation. Warranties on refurbished or remanufactured components or Products must be identical to the manufacturer's new equipment warranty or industry's normal warranty when remanufacturer does not offer new equipment. See Appendix B, *Remanufactured, Recycled, Recyclable or Recovered Materials*.

6.27 Environmental Attributes and NYS Executive Order Number 4

New York State is committed to environmental sustainability and endeavors to procure Products with reduced environmental impact. One example of this commitment may be found in Executive Order No. 4 (Establishing a State Green Procurement and Agency Sustainability Program), which imposes certain requirements on State Agencies, authorities, and public benefit corporations when procuring Products. More information on Executive Order No. 4, including specifications for offerings covered by this Contract, may be found at <https://www.ogs.ny.gov/greenny/>. State entities subject to Executive Order No. 4 are advised to become familiar with the specifications that have been developed in accordance with the Order, and to incorporate them, as applicable, when making purchases under this Contract.

6.28 Diesel Emission Reduction Act

Pursuant to N.Y. Environmental Conservation Law § 19-0323 (the "Law"), it is a requirement that heavy duty diesel vehicles in excess of 8,500 pounds use the best available retrofit technology ("BART") and ultra-low sulfur diesel

fuel (“ULSD”). The requirement of the Law applies to all vehicles owned, operated by or on behalf of, or leased by State Agencies and State or regional public authorities. It also requires that such vehicles owned, operated by or on behalf of, or leased by State Agencies and State or regional public authorities with more than half of its governing body appointed by the Governor utilize BART.

The Law may be applicable to vehicles used by Contractors “on behalf of” State Agencies and public authorities and require certain reports from Contractors. All heavy duty diesel vehicles must have BART by the deadline provided in the Law. The Law also provides a list of exempted vehicles. Regulations set forth in 6 NYCRR Parts 248 and 249 provide further guidance. The Bidder hereby certifies and warrants that all heavy duty vehicles, as defined in the Law, to be used under this Contract, will comply with the specifications and provisions of the Law, and 6 NYCRR Parts 248 and 249.

6.29 Overlapping Contract Products

Products available under the resulting Contract may also be available from other New York State Contracts. Authorized Users will be advised to select the most cost effective procurement alternative that meets their program requirements and to maintain a procurement record documenting the basis for this selection.

6.30 Preferred Source Products

Section 162 of the State Finance Law requires that Authorized Users afford first priority to the Products of Preferred Source suppliers such as Corcraft (the marketplace name for the NYS Department of Corrections and Community Supervision, Division of Industries), New York State Preferred Source Program for People who are Blind (NYSPPSP), and New York State Industries for the Disabled (NYSID), and others determined by law, when such Products meet the form, function and utility of the Authorized User. Some Products in the resultant Contract may be available from one or more Preferred Sources. An Authorized User must determine if a particular Product is approved for a Preferred Source and follow the requirements of State Finance Law § 162(3) or (4)(b), respectively, before engaging the Contractor.

6.31 NYS Vendor Responsibility

OGS conducts a review of prospective Contractors (“Bidders”) to provide reasonable assurances that the Bidder is responsive and responsible. A For-Profit Business Entity Questionnaire (hereinafter “Questionnaire”) is used for non-construction Contracts and is designed to provide information to assess a Bidder’s responsibility to conduct business in New York based upon financial and organizational capacity, legal authority, business integrity, and past performance history. By submitting a Bid, Bidder agrees to fully and accurately complete the Questionnaire. The Bidder acknowledges that the State’s execution of the Contract will be contingent upon the State’s determination that the Bidder is responsible, and that the State will be relying upon the Bidder’s responses to the Questionnaire, in addition to all other information the State may obtain from other sources, when making its responsibility determination.

OGS recommends each Bidder file the required Questionnaire online via the New York State VendRep System. To enroll in and use the VendRep System, please refer to the VendRep System Instructions and User Support for Vendors available at the Office of the State Comptroller’s (OSC) website at <http://www.osc.state.ny.us/vendors/index.htm> or to enroll, go directly to the VendRep System online at <https://portal.osc.state.ny.us> .

Vendors must provide their New York State Vendor Identification Number when enrolling. For information on how to request assignment of a Vendor ID, see the NYS Vendor File Registration section. OSC provides direct support for the VendRep System through user assistance, documents, online help, and a help desk. The OSC Help Desk contact information is located at <http://www.osc.state.ny.us/portal/contactbuss.htm> . Bidders opting to complete and submit the paper questionnaire can access this form and associated definitions via the OSC website at http://www.osc.state.ny.us/vendrep/forms_vendor.htm .

In order to assist the State in determining the responsibility of the Bidder prior to Contract award, the Bidder must complete and certify (or recertify) the Questionnaire no more than six (6) months prior to the Bid due date. A Bidder’s Questionnaire cannot be viewed by OGS until the Bidder has certified the Questionnaire. It is

recommended that all Bidders become familiar with all of the requirements of the Questionnaire in advance of the Bid opening to provide sufficient time to complete the Questionnaire.

The Bidder agrees that if it is awarded a Contract the following shall apply:

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

The Commissioner of OGS, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of OGS issues a written notice authorizing a resumption of performance under the Contract.

The Contractor agrees that if it is found by the State that Contractor's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Contract may be terminated by the Commissioner of OGS at the Contractor's expense where the Contractor is determined by the Commissioner of OGS to be non-responsible. In such event, the Commissioner of OGS may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

6.32 NYS Tax Law Section 5-a

Tax Law § 5-a requires certain Contractors awarded State Contracts for commodities, services and technology valued at more than \$100,000 to certify to NYS Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to Contracts where the total amount of such Contractors' sales delivered into New York State is in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and Subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

A Contractor is required to file the completed and notarized Form ST-220-CA with the Bid to OGS certifying that the Contractor filed the ST-220-TD with DTF. Only the Form ST-220-CA is required to be filed with OGS. The ST-220-CA can be found at https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf. The ST-220-TD can be found at https://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf. Contractor should complete and return the certification forms within five (5) business days of request (if the forms are not completed and returned with Bid submission). Failure to make either of these filings may render a Contractor non-responsive and non-responsible. Contractor shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law. The ST-220-TD only needs to be filed once with DTF, unless the information changes for the Contractor, its affiliates, or its Subcontractors.

Vendors may call DTF at 518-485-2889 with questions or visit the DTF web site at <https://www.tax.ny.gov/> for additional information.

6.33 “OGS or Less” Guidelines

Purchases of the Products included in the Solicitation and resulting Contract are subject to the “OGS or Less” provisions of State Finance Law § 163(3)(a)(v). 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 Office of the State Comptroller and competitive bidding of requirements exceeding the discretionary threshold. State Agencies should refer to Procurement Council Guidelines for additional information.

6.34 Non-State Agencies Participation in Centralized Contracts

New York State political subdivisions and others authorized by New York State law may participate in Centralized Contracts. These include, but are not limited to, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See Appendix B, *Participation in Centralized Contracts*. For Purchase Orders issued by the Port Authority of New York and New Jersey (or any other authorized entity that may have delivery locations adjacent to New York State), the terms of 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 (<https://www.ogs.ny.gov/purchase/snt/othersuse.asp>). Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to NYS Procurement Services Customer Services at 518-474-6717.

6.35 Extension of Use

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

6.36 New Accounts

Contractor may ask State Agencies and other Authorized Users to provide information in order to facilitate the opening of a customer account, including documentation of eligibility to use New York State Contracts, agency code, name, address, and contact person. State Agencies shall not be required to provide credit references.

6.37 Centralized Contract Modifications

- A. OGS, an Authorized User, or the Contractor may suggest modifications to the Centralized Contract or its Appendices. Except as specifically provided herein, modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the parties. Modifications may take the form of an update or an amendment. “Updates” are changes that do not require a change to the established Centralized Contract terms and conditions. A request to add new Products at the same or better price level is an example of an update. “Amendments” are any changes that are not specifically covered by the terms and conditions of the Centralized Contract, but inclusion is found to be in the best interest of the State. A request to change a contractual term and condition is an example of an amendment.
- B. Updates to the Centralized Contract and the Appendices may be made in accordance with the contractual terms and conditions to incorporate new Products, make price level revisions, delete Products, or to make such other updates to the established Centralized Contract terms and conditions, not resulting in a change to such terms and conditions, which are deemed to be in the best interest of the State.
- C. OGS reserves the right to consider modifications which are not specifically covered by the terms of the Centralized Contract, but are judged to be in the best interest of the State. Such modifications are deemed

amendments to the Centralized Contract and may require negotiations between Contractor and OGS before execution.

- D. Modifications proposed by OGS or an Authorized User, including updates and amendments, shall be processed in accordance with the terms of the Centralized Contract and Appendix B, *Modification of Contract Terms*.

6.38 Drug and Alcohol Use Prohibited

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

6.39 Traffic Infractions

Neither the State nor Authorized Users will be liable for any expense incurred by the Contractor's personnel for any parking fees or as a consequence of any traffic infraction or parking violation attributable to employees of the Contractor in performance of the Contract.

6.40 Samples

- A. **Bidder Supplied Samples** - The Commissioner reserves the right to request from the Bidder/Contractor a representative sample(s) of the Product offered at any time prior to or after award of a Contract. Unless otherwise instructed, samples shall be furnished within the time specified in the request. Untimely submission of a sample may constitute grounds for rejection of the Bid or cancellation of the Contract. Samples must be submitted free of charge and be accompanied by the Bidder's name and address, any descriptive literature relating to the Product and a statement indicating how and where the sample is to be returned. Where applicable, samples must be properly labeled with the appropriate Solicitation or Contract reference.

A sample may be held by the Commissioner during the entire term of the Contract and for a reasonable period thereafter for comparison with deliveries. At the conclusion of the holding period, the sample, where feasible, will be returned as instructed by the Bidder, at the Bidder's expense and risk. Where the Bidder has failed to fully instruct the Commissioner as to the return of the sample (i.e., mode and place of return, etc.) or refuses to bear the cost of its return, the sample shall become the sole property of the receiving entity at the conclusion of the holding period.

- B. **Enhanced Samples** - When an approved sample exceeds the minimum specifications, all Product delivered must be of the same enhanced quality and identity as the sample. Thereafter, in the event of a Contractor's default, the Commissioner may procure a Product substantially equal to the enhanced sample from other sources, charging the Contractor for any additional costs incurred.
- C. **Conformance with Samples** - Submission of a sample (whether or not such sample is tested by, or for, the Commissioner) and approval thereof shall not relieve the Contractor from full compliance with all terms and conditions, performance related and otherwise, specified in the Solicitation. If in the judgment of the Commissioner the sample or Product submitted is not in accordance with the specifications or testing requirements prescribed in the Solicitation, the Commissioner may reject the Bid. If an award has been made, the Commissioner may cancel the Contract at the expense of the Contractor.
- D. **Testing** - All samples are subject to tests in the manner and place designated by the Commissioner, either prior to or after Contract award. Unless otherwise stated in the Solicitation, Bidder samples consumed or rendered useless by testing will not be returned to the Bidder. Testing costs for samples that fail to meet Contract requirements may be at the expense of the Contractor.
- E. **Requests for Samples by Authorized Users** - Requests for samples by Authorized Users require the consent of the Contractor. Where Contractor refuses to furnish a sample, Authorized User may, in its sole discretion, make a determination on the performance capability of the Product or on the issue in question.