Corning Tower, Empire State Plaza, Albany, NY 12242 | www.nyspro.ogs.ny.gov | customer.services@ogs.ny.gov | 518-474-6717

Contract Award Notification Update

Subject: Contract Extension and Contract Information Update

DATE: January 24, 2019 **AWARD #:** 22688 **GROUP #:** 02450

AWARD DESCRIPTION: Food, Retail (Downstate)

CONTRACT PERIOD: March 24, 2014 – March 23, 2020

CONTACT: Phyllis Keeler | 518-408-6397 | ogs.sm.SST_food@ogs.ny.gov

CONTRACT NO.: PC66400 **CONTRACTOR:** Metropolitan Foods, Inc. dba Driscoll Foods.

ALL STATE AGENCIES AND OTHERS AUTHORIZED TO USE STATE CONTRACTS:

The above referenced contract with Metropolitan Foods Inc dba Driscoll Foods has been extended through March 23, 2020.

The contractor's contact information has been updated on the website.

For Ordering: John Levatino
Phone: (973) 672-9400 Ext 288
(M-F: 8am-5pm)
E-Mail: jlevatino@driscollfoods.com
cc: wjk2767@cs.com
Fax: (866) 246-9255
Toll Free Phone: (866) 706-3663

Authorized users should refer to the contract at the URL address below for the most current contract information including Price Guides and Frequently Asked Questions (FAQs).

https://ogs.ny.gov/purchase/spg/awards/0245022688CAN.HTM

All other terms and conditions remain the same

22688p07/pmk

New York State Office of General Services
New York State Procurement (NYSPRO)
Corning Tower Building
Empire State Plaza
Albany, New York 12242
http://nyspro.ogs.ny.gov

PURCHASING MEMORANDUM

CONTRACT AWARD NOTIFICATION UPDATE

AWARD NUMBER: 22688

DATE: July 31, 2014

GROUP: 02450 – FOOD (Retail) (Downstate)

PLEASE ADDRESS INQUIRIES TO:

STATE AGENCIES & CONTRACTORS
Phyllis M. Keeler
Contract Management Specialist
(518) 474-5340
phyllis.keeler@ogs.ny.gov

CONTRACT PERIOD: March 24, 2014 – March 23, 2019

OTHER AUTHORIZED USERS
Customer Services
(518) 474-6717
customer.services@ogs.ny.gov

CONTRACTOR(S)/
CONTRACT NO(S).: Metropolitan Foods, Inc. PC66400
D/B/A Driscoll Foods

SUBJECT: Contract Amendment

ALL STATE AGENCIES AND OTHERS AUTHORIZED TO USE STATE CONTRACTS:

OGS has amended the above referenced contract to clarify the sections listed below.
Section 25: Invoicing
Section 31: Minimum Order

To view the complete Amendment, including complete contract terms and conditions, follow the link below and then select "Executed Contract Terms and Conditions".

http://ogs.ny.gov/purchase/spg/pdfdocs/0245022688ContractorInfo.pdf

In addition, revised FAQs have been issued to reflect changes made pursuant to the Amendment. The FAQs can be viewed by following the link below.

http://ogs.ny.gov/purchase/spg/pdfdocs/0245022688FAQ.pdf

Authorized users should follow the link below in order to reference the most current copy of the Contract Award Notification, which lists a revised date of July 31, 2014, when purchasing from the contract.

http://ogs.ny.gov/purchase/spg/pdfdocs/0245022688ra.pdf

New York State Office Of General Services
New York State Procurement
Corning Tower Building
Empire State Plaza
Albany, New York 12242
http://www.ogs.ny.gov

PURCHASING MEMORANDUM

CONTRACT AWARD NOTIFICATION UPDATE

AWARD NUMBER: 22688

DATE: April 7, 2014

GROUP: 02450 - Groceries (Retail) (Downstate)

PLEASE ADDRESS INQUIRIES TO:

STATE AGENCIES & CONTRACTORS
Phyllis M. Keeler
Contract Management Specialist
(518) 474-5340
Phyllis.Keeler@ogs.ny.gov

CONTRACT PERIOD: March 24, 2014 – March 23, 2019

OTHER AUTHORIZED USERS
Customer Services
(518) 474-6717
customer.services@ogs.ny.gov

CONTRACTOR(S)/
CONTRACT NO(S).: Metropolitan Foods, Inc. PC66400
D/B/A Driscoll Foods

SUBJECT: Revised Award

ALL STATE AGENCIES AND OTHERS AUTHORIZED TO USE STATE CONTRACTS:

Please be advised that a revised award has been issued incorporating recent changes to the Contract. Please refer to the most recent copy of the award when placing orders against the contract.

http://www.ogs.ny.gov/purchase/spg/awards/0245022688CAN.HTM

State of New York Executive Department
New York State Procurement (NYSPro)
Corning Tower Building - 38th Floor
Empire State Plaza
Albany, New York 12242
http://www.ogs.ny.gov

CONTRACT AWARD NOTIFICATION

Title	:	**Group 02450 – FOOD (Retail) (Downstate Region)** **Classification Code: 50**
Award Number	:	**22688** **(Replaces Awards 19958)**
Contract Period	:	**March 24, 2014 – March 23, 2019**
Bid Opening Date	:	**June 20, 2013**
Date of Issue	:	**March 21, 2014**
Specification Reference	:	**As Incorporated In The Award**
Contractor Information	:	**Appears on Page 2 of this Award**

Address Inquiries To:

State Agencies & Vendors	**Political Subdivisions & Others**
Name : Jessica Walker Title : Contract Management Specialist I Phone : 518-474-4174 E-mail : Jessica.walker@ogs.ny.gov	New York State Procurement Customer Services Phone : 518-474-6717 Fax : 518-474-2437 E-mail : customer.services@ogs.ny.gov

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

Description

This contract award covers Retail food and related non-food products for the Downstate Region of New York State. For purposes of this award, the state is divided into four separate regions: Western, Central, Eastern and Downstate. A listing of the counties that fall within these regions are provided herein (see end of document). Each Contractor's executed contract is posted to the OGS website separately. This CONTRACT AWARD NOTIFICATION is a quick summary of Awardee information with regard to Region. Authorized Users should refer to the executed contracts of Contractors for complete terms and conditions. Award Number 22794 covers the awarded Commercial food and related non-food products contracts from IFB #22688 for all regions of New York State.

PR # 22688

(continued)

CONTRACT #	CONTRACTOR	FED.IDENT.#	NYS VENDOR#
PC66400	Metropolitan Foods Inc., Dba Driscoll Foods	223482240	1000008850

For complete Contractor and Reseller contact information, Contract Terms and Conditions, and Pricelists for this award, please see the Contractor Information pages located on the OGS website at: http://www.ogs.ny.gov/purchase/snt/awardnotes/0245022688can.htm.

Cash Discount, If Shown, Should be Given Special Attention.
INVOICES MUST BE SENT DIRECTLY TO THE ORDERING AGENCY FOR PAYMENT.
(See "Contract Payments" and "Electronic Payments" in this document.)

AGENCIES SHOULD NOTIFY THE NEW YORK STATE PROCUREMENT PROMPTLY IF THE CONTRACTOR FAILS TO MEET DELIVERY OR OTHER TERMS OF THIS CONTRACT. PRODUCTS OR SERVICES WHICH DO NOT COMPLY WITH THE SPECIFICATIONS OR ARE OTHERWISE UNSATISFACTORY TO THE AGENCY SHOULD ALSO BE REPORTED TO THE NEW YORK STATE PROCUREMENT.

SMALL, MINORITY AND WOMEN-OWNED BUSINESSES:

The letters SB listed under the Contract Number indicate the contractor is a NYS small business. Additionally, the letters MBE and WBE indicate the contractor is a Minority-owned Business Enterprise and/or Woman-owned Business Enterprise.

RECYCLED, REMANUFACTURED AND ENERGY EFFICIENT PRODUCTS:

The New York State Procurement supports and encourages the purchase of recycled, remanufactured, energy efficient and "energy star" products. If one of the following codes appears as a suffix in the Award Number or is noted under the individual Contract Number(s) in this Contract Award Notification, please look at the individual awarded items for more information on products meeting the suffix description.

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

NOTE TO AUTHORIZED USERS:

When placing purchase orders under the contract(s), the authorized user should be familiar with and follow the terms and conditions governing its use which usually appears at the end of this document. The authorized user is accountable and responsible for compliance with the requirements of public procurement processes. The authorized user must periodically sample the results of its procurements to determine its compliance. In sampling its procurements, an

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authorized user should test for reasonableness of results to ensure that such results can withstand public scrutiny.

The authorized user, when purchasing from OGS contracts, should hold the contractor accountable for contract compliance and meeting the contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, authorized users are encouraged to seek improved pricing whenever possible.

Authorized users have the responsibility to document purchases, particularly when using OGS multiple award contracts for the same or similar product(s)/service(s), which should include:

- a statement of need and associated requirements,
- a summary of the contract alternatives considered for the purchase,
- the reason(s) supporting the resulting purchase (e.g., show the basis for the selection among multiple contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).

REQUEST FOR CHANGE:

Any request by the agency or contractor regarding changes in any part of the contract must be made in writing to NYS Procurement, prior to effectuation.

CONTRACT PAYMENTS:

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

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

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

See "Contract Billings" in Appendix B, OGS General Specifications.

ELECTRONIC PAYMENTS:

The Office of the State Comptroller (OSC) offers an "electronic payment" option in lieu of issuing checks. To obtain an electronic payment authorization form visit the OSC website at www.osc.state.ny.us or contact them by e-mail at epunit@osc.state.ny.us or by phone at 518-486-1255.

PRICE GUIDES:

Authorized Users are to make purchases from the Contractor’s most up-to-date Price Guide as listed on the OGS website.

Price Guides shall include the following:

- Product Sub-Lot (i.e., Dairy, Produce, Meat/Poultry/Fish, Frozen, Baked Goods, etc.);
- Sub-Lot Markup;
- Product Stock Number;
- Product Brand or Manufacturer;
- Product Description;
- Pack, Size, Unit; “NYS Net Delivered Price”

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Submission of Price Guide after Award

Price Guides, electronic and paper, shall be updated weekly, monthly, and quarterly as shown herein. The Price Guides provided AFTER issuance of award will include all fields as listed above EXCEPT for the line items noted with an asterisk (*). OGS will determine the effective dates of the Price Guides being used immediately succeeding contract start date(s). The effective dates of the weekly Price Guide shall be specified by the Contractor and shall be fixed for a one week period. The monthly prices shall be effective beginning the first day of the month and shall be fixed for the one-month period. The quarterly prices shall be effective beginning the first day of the calendar quarter and shall be fixed for the one-quarter period. Electronic and paper price guides shall be effective on the same date. Pricing shall be effective on the date of delivery.

All prices in the Price Guides distributed to Authorized Users shall be identical for all distribution locations. Additionally all items in the Price Guides shall be available to all Authorized Users in the awarded region. Ideally, the product numbers (i.e., stock numbers) should be the same for identical items from all participating branches/warehouses/distribution centers, etc. Where products are not numbered identically, Contractor shall be required to submit cross-reference sheets.

NOTE: Both before and after award, the State reserves the right to:

- modify the fields that are to be displayed in the Price Guide;
- to add or delete products from the Price Guides as deemed necessary.

EXTENSION OF USE

This contract may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State (the lead contracting State) and the contractor. Political subdivisions and other authorized entities within each participating State or governmental jurisdiction may also participate in this contract if such State normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS

New York State political subdivisions and others authorized by New York State law may participate in contracts. These include, but are not limited to local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See "Participation in Centralized Contracts" in Appendix B, OGS General Specifications. For purchase orders issued by the Port Authority of New York and New Jersey (or any other authorized entity that may have delivery locations adjacent to New York State), the terms of the "Price" clause shall be modified to include delivery to locations adjacent to New York State.

Upon request, all eligible non-State agencies must furnish contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. A list of categories of eligible entities is available on the OGS web site (http://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 OGS New York State Procurement's Customer Services at (518)474-6717.

PRICE GUIDE MAINTENANCE:

Contractor(s) shall submit updated Price Guide to OGS in electronic format to the attention of the individual designated by Contract. The latest Price Guide will then be published to OGS's website. There may be times when the Contractor has no changes to report in their Price Guide (i.e., no price adjustments

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or product add/delete). Contractor may elect to continue using the previous quarter's Price Guide as long as it remains current. When the Contractor elects to use the previous quarter's Price Guide, Contractor must notify OGS in writing that there were no changes to the Price Guide and Contractor is using the previous quarter's Price Guide.
At no charge to Authorized Users, the Contractor must prepare, supply, and keep Price Guide current. Identical Price Guides must be made available electronically to Authorized Users and OGS and must be available at least one (1) business day before the effective date of the Price Guide. Pre-approval of Price Guides by OGS is not required. Electronic and/or hard copies of the Price Guide must be submitted to Authorized Users, upon request. All information in all distributed copies of the Price Guide (hard copies, electronic transmittals and web-based pricing) shall be identical. In the event of a discrepancy, it is the Contractor's obligation to notify OGS and Authorized Users of the governing source pricing (hard copy, electronic transmittals, or web based). Prices may be reduced at any time; however, price increases other than those discussed in Price Changes, shall not be permitted.

Failure to maintain accurate, timely Price Guides may result in contract cancellation.

PRICE CHANGES:

Products in PRICE GUIDE:
Adjustments (increases or decreases) shall be made as shown below:

Retail	Sub-Lot	Adjustment Frequency
	Dairy	Weekly
	Produce	Weekly
	Meat, Poultry and Fish	Weekly
	Frozen	Monthly
	Ambient, Canned and Dry	Monthly
	Baked Goods	Quarterly
	Non-food	Quarterly

Adjustments shall be calculated and reflect the reduction from applicable allowances as defined in Contract Section 9 Price. All Price Guides created for this award are subject to audit by the State.

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RESTRICTIONS ON PURCHASING

Alcoholic beverages are expressly excluded from the scope of these contracts. Authorized Users shall not seek to purchase alcoholic beverages and Contractor shall not sell alcoholic beverages to Authorized Users under such contracts.

CONTRACT UPDATES – ADDITION AND DELETION OF PRODUCTS

Product changes to items listed in Contract Price Guide are addressed in the following manner: Updates/Additions/Deletions include: i) adjusting pricing for Products previously incorporated under the Contract as per IFB Section **Error! Reference source not found.** Price Changes, ii) adding new products within the established, previously approved pricing structure as necessitated by such changes as seasonal availability, manufacturer pack size changes, changing Authorized User needs etc., and iii) deleting Products previously incorporated under the Contract.

For deletions, if requested by the State, Contractor must supply documentation supporting the reason for removal of the product from the Contractor's Price Guide. Removal of any Market Basket items or equivalent substitutions by Contractor from its Price Guide requires OGS prior approval.

ORDERS

Orders shall be accepted by the Contractor between the hours of 8:00 A.M. through 5:00 P.M. ET, Monday through Friday, except legal holidays. Contractor shall be capable of accepting orders manually, via facsimile, and electronically via e-mail. All orders shall reference contract number, requisition and/or purchase order number as required.
For Lot 1 - Commercial, Contractor must be able to accept orders via a web based ordering system as described below. The order entry system shall allow an Authorized User to enter orders and shall have full order inquiring capabilities.

OPPORTUNITY BUYS

The State may utilize drop shipment, spot or opportunity buy, or trailer load incentives when an Authorized User is able to benefit from either the Contractor or third party food vendor. To qualify for the drop shipment, spot or opportunity buy, or trailer load incentive, the order must be greater than $2,500. The Contractor shall have the right of first refusal to fulfill the Authorized User's request. The Contractor will have 48 hours, from when an Authorized User initiates a drop shipment, spot or opportunity buy, or trailer load request to notify the Authorized User whether Contractor would like to fulfill the Authorized User's request. Should the Contractor be unable to fulfill the request within the 48 hour time period, the Authorized User shall be able to initiate a drop shipment, spot or opportunity buy or trailer load order with a third party vendor. The third party vendor will transport the food order directly to the Authorized User location, bypassing the Contractor from physically handling the food order. In the instance that the Authorized User utilizes a third party for transportation, the Contractor will not be responsible for the actual receiving of the drop shipment at its warehouse or transporting it to the Authorized User facility.

If the Contractor does not process or transport the drop shipment, spot or opportunity buy, or trailer load order the Contractor shall not invoice the Authorized User for any charges for the drop , spot or opportunity buy, or trailer load shipment order.

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To process the drop shipment, spot or opportunity buy, or trailer load, the Contractor may add a Percent Markup to the delivered invoiced price of the order not to exceed the Sub-Lot Markup for the appropriate Sub-Lot. Contractor may engage a third party in such a purchase, however, no change from the initial supplier's spot price shall be allowed. Opportunity buy purchases must be identified in the Contractor's regular reporting requirements to OGS. See Administrative and Reporting Requirements.

DELIVERY REQUIREMENTS

Contractor directly, or through its subcontractor, shall be able to deliver all items/product categories 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, as determined by the facility, except/excluding legal holidays

NOTE: Some large Authorized Users may require as many as three deliveries per week.

Some locations (psychiatric and developmental facilities) may accept Saturday delivery. Correctional facilities will not accept Saturday delivery. For some facilities, delivery may be required to more than one building.

After an Authorized User places an order, Contractor shall work with the Authorized User to establish mutually beneficial dates of delivery, to the extent possible. Contractor shall contact Authorized User prior to making delivery if regularly scheduled delivery date is changed. Any deviations from the set delivery schedule must be acceptable to both parties.

INVOICING

Contractor invoices must include detailed line item information to allow Authorized Users to verify delivered pricing matches the correct price on the date of order. At a minimum, the following fields must be included on all invoices to Authorized Users:

- Order Date;
- Authorized User's Purchase Order Number or Authorized User's Annual Blanket Purchase Order Number (as such information is provided by the Authorized User);
- SKU Number;
- Description;
- NYS Net Delivered Price separated by order date;
- Contractor's Federal ID Number, and
- NYS Vendor ID Number

RESTRICTED DELIVERY

Price includes "restricted" delivery. Delivery to some Authorized Users, particularly Correctional and NYS Office of Mental Health facilities, have "restricted" deliveries, which include restrictions around time or process for delivery. Delivery must be made during certain hours, generally between 8:30 A.M. to 10:30 A.M. and 12:30 P.M. to 2:30 P.M.ET, and must be made only on weekdays (Monday through Friday) except/excluding holidays. Other restrictions, include but are not limited to, thorough inspection of vehicle/trailer and needing security clearances. These restrictions may also apply for deliveries to other Authorized Users. It should be noted that correctional facilities occasionally have "lock downs" during which time there is no exit or entry.

(continued)

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 Contractor and the Authorized Users will come to a mutual agreement on times and days for recurring delivery.

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 (40') vehicles. Consequently, deliveries to these locations are required to be with smaller vehicles - 26,000 pound (20' straight trucks or 24' "pups") or smaller capacity/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.

REFRIGERATION

Contractor must preserve product integrity, wholesomeness, safety, fitness, etc., by maintaining proper temperature with the use of refrigerated/freezer trucks for refrigerated and frozen goods; ambient trailers shall not be used to ship refrigerated/frozen product.

PALLETIZATION

Contractor shall furnish commodity palletized on either 48” x 40” OR 40” x 32” four way GMA pallets as instructed by the Authorized User. Overall height, commodity plus pallet, shall not exceed 66”; maximum weight not to exceed 2,500 pounds. All shipping units shall have a uniform block and tier. Containers shall be strapped to pallets or shrink-wrapped to prevent movement of the load. Pallet shall be returned or exchanged to Contractor at time of delivery, on subsequent deliveries, or as arranged between the Contractor and the Authorized User.

While Contractor may utilize double palleting in shipping, Authorized Users do NOT have the ability to unload or handle double pallets. If double palleting is used, Contractor is responsible for unloading and ensuring safe handling.

Mixed loads of dissimilar products are to be avoided, as well as inappropriate stacking of heavy/dense items on top of light items.

Some Authorized Users have limited receiving capabilities. Contractor must provide cart/hand truck delivery when required by Authorized User.

STRAPPING/SHRINK WRAPPING

Stacked product shall be adequately strapped or shrink wrapped to prevent tipping and other movement during shipping, to ensure prompt unloading, and to avoid the need for restacking, etc.

MINIMUM ORDER

Minimum order is $300 for delivery to a single location. The $300 minimum is for aggregate total of all products delivered to one location; products may be on more than one purchase order, products may be on more than one invoice.

All orders shall be labeled and packaged adequately to assure safe handling and proper delivery. Authorized Users shall be advised to combine orders to meet the minimum order. Contractor shall not be required to identify and combine multiple orders received from various departments within a single Authorized User in order to meet the minimum. Contractor may choose to waive delivery fees if multiple orders, under the minimum, are delivered on the same day to the same Authorized User.

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There shall be no additional charges, fees, delivery costs, etc., for back orders (product previously ordered and not delivered by contractor). Contractor may elect to honor orders for less than the minimum order.

OUT OF STOCK/NOT AVAILABLE PRODUCT

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, including Preferred Source items stocked and furnished by the Contractor, there shall be no substitution of products ordered without the express authorization of the Authorized User. Such substitutions shall be of same or better grade, quality, etc. Substitutions should not be made on a continuing basis. Explanation of repeated/continued substitutions shall be made to the State. Out-of-stock/not available product situations may be a basis for cancellation of contract and/or charging back for open market purchase or any other appropriate remedies. The Authorized User shall not be liable for unauthorized product substitution.

UNUSABLE PRODUCT

Any claim that delivered product is unusable (damaged, rotten, non-edible, unacceptable substitution, etc.), shall be resolved by credit, substitution or any other applicable means for resolution within three (3) business days upon written notice from receiving Authorized User. If a satisfactory resolution is not reached between the Authorized User and the Contractor, a decision may be made by OGS that shall be final.

PRODUCT RETURNS

Products ordered in error by the Authorized User may be assessed a restocking fee. If an authorized user returns a product ordered in error, but still in resalable condition, the Contractor may charge a 5% restocking fee by issuing a revised invoice to the authorized user. Restocking fees will be applied by occurrence.

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.

FILL RATE

Bidder 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, not including preferred source items stocked and furnished as described in IFB Section **Error! Reference source not found.** Contractor Stocking and Furnishing of Preferred Source Products.

FUEL SURCHARGE

The State shall consider the implementation of a fuel surcharge as a result of a national or worldwide catastrophe that causes the "Weekly US On-Highway Diesel Fuel Price" for the Central Atlantic (New York State) region to exceed 1.5 times the price per gallon at the time of bid opening. (The per gallon price on date of bid opening was $3.91 per gallon.) For example, if the price at the time of Bid Opening is $4.00 a gallon; the price per gallon would have to exceed $6.00 a gallon before NYS would consider implementing a fuel surcharge. Prices shall be tracked using information obtained through the Energy Information Administration, United States Department of Energy's (EIA DOE) web site: (http://tonto.eia.doe.gov/oog/info/gdu/gasdiesel.asp).

For every twenty ($.20) cents per gallon that the price exceeds 1.5 times the cost of the referenced diesel fuel price at the time of bid opening, a delivery surcharge of $1.00 per delivery will be allowed.

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For example, if $4.00 is the price of diesel on the date of bid opening and $6.20 is the current price, the difference above 1.5 times the price at time of bid opening is $.20. Therefore, a surcharge of $1.00 ($1.00 for every twenty cents) per delivery may be added.

The increase shall be figured in whole increments only. It is the responsibility of the Contractor to notify OGS of any request. All fuel surcharges shall take effect after written approval by OGS. Fuel surcharges will be reviewed (and updated, if necessary) weekly once a fuel surcharge has been implemented.

Once the "Weekly US On-Highway Diesel Fuel Price" for the Central Atlantic (New York State) region drops below 1.5 times the price per gallon threshold based upon the original bid opening date, the fuel surcharges shall be removed.

In the event fuel prices decrease by more than 50% of the price per gallon based upon the price in effect at the time of the bid opening using the "Weekly US On-Highway Diesel Fuel Price" the State shall apply a credit to each invoice as per the above example.

Contractor shall collect only one fuel surcharge per delivery, when applicable. Contractor shall not be allowed to collect additional fuel surcharges if additional delivery to the same site is made due to Contractor error, (i.e. backorder or shortage).

If Contractor is participating in an Opportunity Buy as the distributor, Contractor shall be allowed to charge the fuel surcharge, when applicable

NEW ACCOUNTS

Contractor may ask State agencies and other Authorized Users to provide information such as documentation of eligibility to use New York State contracts, agency code, name, address, and contact person in order to facilitate the opening of a customer account. Authorized Users shall not be required to complete any credit applications or provide credit references.

CUSTOMER SERVICE AND TOLL FREE NUMBERS

The Contractor shall provide a sufficient number of employees who are knowledgeable and responsive to customer needs and who can effectively service the Contract. The Contractor shall also designate a customer service representative for the contract.

Contractor must provide a toll-free telephone number for the Authorized Users' usage. Contractor must staff this toll-free number at a minimum from 9:00 A.M. to 5:00 P.M. ET Monday through Friday.

STANDARD PACKAGING

Orders are to be drawn in quantities consistent with the industry standard.
EXCEPTION: See Packaging/container security requirements for selected Authorized Users.

DISCREPANCIES

OGS or the Authorized User must notify Contractor of all order and/or invoice discrepancies within five business days from receipt. Contractor shall take all commercially reasonable steps to resolve discrepancies (e.g., shortages etc.) within five (5) business days.

BILLING/ORDERING SYSTEMS

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.

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OTHER EXPENSES

The Authorized User shall not be liable for any expense incurred by the Contractor as a consequence of any traffic infraction or parking violations attributable to Contractor's contract performance.

PRODUCT LEAD TIME

In cases where a special order product, such as holiday meals, may have a longer than normal lead time, Contractor shall notify Authorized Users of the additional time needed to fill orders.

ADMINISTRATIVE AND REPORTING REQUIREMENTS

Contractor shall furnish a certified report of sales volume for all products provided under the Contract during each month, no later than the 10th of the following month starting with the first month after contract inception, in accordance with IFB Section **Error! Reference source not found.** Audit Reporting.

Purchases by non-state agencies, political subdivisions and others authorized by law shall be reported in the same report and indicated as required.

A template for such report is included on the Award summary page and titled "Report of Contract Usage" http://www.ogs.ny.gov/purchase/spg/awards/0245022688CAN.HTM

All fields of information shall be accurate and complete. The report is to be submitted electronically in Microsoft Excel 2003 or newer (or as otherwise directed by OGS), via electronic mail to the attention of the individual designated by the Contract and shall reference the Group Number, the Award Number, Contract Number, Sales Period, Contractor's (or other authorized agent) Name, and all other fields required, using the report template.

OGS reserves the right to amend the report template.

Additionally, a certified Allowance Report shall be furnished to OGS every quarter. Such certification shall be in accordance with Section **Error! Reference source not found.** Audit Reporting. The certified report shall include all the above-defined applicable allowances, discounts, and special negotiated pricing agreements for New York State. The report must contain the item, description stock number of item, the terms of the agreement and the amount of the allowance. Any change to any allowance, discount or special negotiated pricing agreement shall be reported to OGS at the time of the report.

Additional related sales information may be required by OGS and must be supplied upon request. PERFORMANCE SURVEYS - Contractor shall be required, upon request, to provide performance surveys to Authorized Users. Contract performance measures may include, but not be limited to, the following: delivery time, fill rate, response time to inquiries, resolution of problems, employee courtesy, and staff knowledgeability. The information reported on the surveys will be used to assess Contractor's performance and may, if necessary, be used to determine continuation or cancellation of award.

The State reserves the right to request monthly documentation of Contractor's fill rate.

AUDIT REPORTING

The State (or the State's designee) shall have the right to verify and audit Supplier Costs, billings, agreements, allowances, promotions, discounts, and rebates. OGS reserves the right to contact Contractor's supplier(s) and request prices charged to Contractor for specific items.

(continued)

Contractor shall issue refunds, credits for sums due as a result of any overcharges, incorrect billings, incorrect payments, improperly retained applicable allowances etc. to the Authorized User or as designated by OGS. The following requirements are not intended to be restrictive; the State reserves the right to expand or diminish audit requirements as it deems proper and necessary to preserve the integrity of the contract. The number of products involved and the frequency of requests may be modified for both the bid evaluation and contract audits.

The State further reserves the right to require Contractor to seek alternate pricing from independent suppliers if an OGS audit determines that the Related Party is not providing the most competitive pricing available in the market.

REQUIRED CERTIFICATION

Contractor agrees it shall include the following statement with every invoice or other cost information, including but not limited to sales volumes and allowance reports, provided to the State: "We certify, to the best of our knowledge, the invoices and other cost information submitted are correct and include all applicable allowances, rebates and discounts available to the State of New York." The State will also accept an attachment or addendum or monthly report containing the above certification as long as all invoice numbers are listed that Contractor is certifying to be correct.

CONTRACTOR PRICING TO AUTHORIZED USER

The State may perform audits of the contract each month by requesting Contractor invoices or billings for at least 20 products and validating prices charged against the relevant Price Guide. Failure to provide requested information within fourteen (14) calendar days may be the basis to cancel the contract, request a responsibility hearing or initiate other appropriate action.

Contractor must supply Price Guides to OGS electronically in an editable Microsoft Excel 2003 or newer file (or as otherwise directed by OGS), with the frequency described in IFB Section **Error! Reference source not found.** Price Changes.

The selection of items sold will be traced to supporting documentation to confirm cost used to calculate price and auditors will verify that the correct mark-up percentage was applied to calculate the price. The design of the sampling methodology will seek to cover the contract spend, it will be implemented based on comparison of contract pricing to benchmarking of pricing and changes from prior pricing.

CONTRACTOR COST VERIFICATION

The State shall also have the right to verify costs, allowances, incoming freight, billings, etc. Failure of Contractor to provide requested information or to provide their supplier(s) verification of invoice(s)/bid pricing, etc., (when requested) to the State within fourteen (14) calendar days may be the basis to cancel the contract, request a responsibility hearing or initiate other appropriate action.

ADMINISTRATION FEE

In order to assist with the cost of administering and auditing for contract compliance, the Contractor must return to OGS, Office of Financial Administration, in the form of a business check or money order, a fee of 1/4 percent (.0025) of the total sales during each quarter, to be paid no later than thirty (30) calendar days after each calendar quarter. Included with the payment, Contractor must provide a statement listing each invoice on which the fee is based. The State may make use of any available contracts for auditing purposes.

GENERAL PRODUCT REQUIREMENTS

Product shall be the same as furnished to the general trade; meet or exceed USDA, USDC, State, and industry standards and requirements; have a freshness parameter for Authorized Users to have sufficient

(continued)

time from the date of delivery to consume these foods before quality deteriorates; and conform to State, Federal and industry standards with respect to safety. Conformance to standards and requirements shall include, but not be limited to:

- weights;
- measures;
- fill of containers;
- drained weights;
- contamination; or
- condition on delivery.

(continued)

The Contractor guarantees any product delivered complies in all respects with standards and regulations established by Federal or New York State laws, including the Federal Food, Drug and Cosmetic Act, decisions of the U.S. Department of Agriculture, and decisions of the U.S. Department of Commerce. The Contractor also guarantees any product delivered is not adulterated or misbranded within the meaning of standards and regulations established by Federal or New York State laws. The Contractor may be required to submit a letter of guarantee from the supplier stating their compliance with Federal and/or New York State laws and regulations.

All requirements apply to any product that may be purchased from contract.

PATHOGENS

No Escherichia coli 0157:H7, or any other pathogens, are permitted in any product.

FROZEN PRODUCT

The maximum time products may be held in a frozen state prior to delivery shall be as follows:

FRESH FROZEN MEAT (except Ground and Diced Meat) - 90 calendar days
GROUND & DICED MEATS - 45 calendar days
CURED & PROCESSED MEAT - 45 calendar days

KOSHER AND PASSOVER CERTIFICATION

Any product designated as "Kosher" shall comply and be labeled with a common accepted Kosher symbol as identified by the Chicago Rabbinical Council and listed on their website: http://www.crcweb.org/agency_list.php and shall meet all the requirements of that certification.
All Baked Goods products delivered shall be Kosher and “PARVE” (prepared without meat, milk, or their derivatives). All Baked Goods products are to be free of pork and pork by-products. Only vegetable oils shall be used in the making of products.

Any product designated as "Passover" shall comply with all requirements for Passover and be labeled with the correct certification.

GRADES & SPECIFICATIONS

All products offered shall be grade B or better, where applicable, unless otherwise specified. Brand names are used solely to establish a benchmark for comparison of nutrition facts and ingredient content and are not meant to be restrictive.

For meat products, the State recognizes there are different grades of beef, pork and lamb available in the industry. All products offered shall be “USDA Select or Better”, unless otherwise specified. For poultry products, Bidder must provide “USDA Grade A” when specified.
OGS and/or Authorized Users have the right on demand, to request verification that the specifications and grades for the food ordered are being provided by the Contractor.

SAMPLES AND TESTING

The State has the right to request samples at no charge and test any product available under the contract in order to determine whether the item is acceptable and meets specifications and grades.

(continued)

NEW YORK STATE FOOD PRODUCTS

Contractors may be required to designate New York State Food Products in their Price Guide(s). State Agencies are expected, and New York state public authorities are strongly encouraged, to purchase New York State Food Products, unless the item does not meet their institutional or programmatic needs.

MOLD, BACTERIA, ETC.

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

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.

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 Authorized User.

CONTRACT PERIOD AND RENEWAL

If mutually agreed between OGS and the Contractor, the contract may be renewed under the same terms and conditions for an additional one year period as described in Appendix B §71 – Contract Term - Renewal.

Price decreases and percentage mark-up decreases are permitted at any time. Authorized Users are encouraged to negotiate additional discounts, where possible.

SHORT TERM EXTENSION

In the event the replacement contract has not been issued, any contract let and awarded hereunder by the State, may be extended unilaterally by the State for an additional period of up to two months upon notice to the Contractor with the same terms and conditions as the original contract including, but not limited to, quantities (prorated for such two month extension), prices, and delivery requirements. With the concurrence of the Contractor, the extension may be for a period of up to three months in lieu of two months. However, this extension terminates should the replacement contract be issued in the interim. See also Appendix B §71, Contract Term – Renewal.

CONTRACT AMENDMENT PROCESS

During the term of the Contract, the Contract may be amended as changes occur within the industry. OGS reserves the right to consider amendments which are not specifically covered by the terms of the Contract but are judged to be in the best interest of the State. Contract amendments shall take effect upon written notification by OGS.

OVERLAPPING CONTRACT ITEMS

Products/services available in this contract may also be available from other New York State contracts. Authorized Users are 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.

(continued)

PREFERRED SOURCE NOTE

State Finance Law §162 requires that many governmental entities, including Executive Agencies, afford first priority to the products/services of Preferred Source suppliers such as Correctional Industries (Corcraft), National Industries for the Blind" (NIB) and NYS Industries for the Disabled (NYSID), when such products/services meet the form, function and, utility of the agency. Some products/services in the resultant contract(s) may be available from one or more Preferred Sources. In the Contract, agencies will be reminded to comply with the statutory requirements and resulting guidelines with respect to affording first priority to the Preferred Sources.

Contractor is required to prominently display the following language on all price guides and contract updates to agencies relative to the award:

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

"OGS OR LESS" GUIDELINES APPLY TO THIS CONTRACT

Purchases of the products included in the IFB and resultant Contracts are subject to the "OGS or Less" provisions of New York 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 Comptroller's Office and competitive bidding of requirements exceeding the discretionary bid limit. State agencies should refer to Procurement Council Bulletin "OGS or Less Purchases" for complete procedural and reporting requirements.

(continued)

Please take a moment to let us know how this contract award has measured up to your expectations. If reporting on more than one contractor or product, please make copies as needed. This office will use the information to improve our contract award, where appropriate. **Comments should include those of the product's end user.**

Contract No.:_____ **Contractor**._____

Describe Product* Provided (Include Item No., if available):_____

***Note**: "**Product**" is defined as a deliverable under any Bid or Contract, which may include commodities (including printing), services and/or technology. The term "Product" includes Licensed Software.

	Excellent	Good	Acceptable	Unacceptable
• Product meets your needs				
• Product meets contract specifications				
• Pricing				

CONTRACTOR

	Excellent	Good	Acceptable	Unacceptable
• Timeliness of delivery				
• Completeness of order (fill rate)				
• Responsiveness to inquiries				
• Employee courtesy				
• Problem resolution				

Comments:_____

_____

_____(over)

Agency:_____ Prepared by:_____

Address:_____ Title:_____

_____ Date:_____

_____ Phone:_____

_____ E-mail:_____

<u>Please detach or photocopy this form & return by FAX to 518/474-2437 or mail to</u>:

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

* * * * *

(continued)

NYS Office of General Services

Serving New York

FOOD PC66400

FIRST AMENDMENT

between

NEW YORK STATE

OFFICE OF GENERAL SERVICES

And

Metropolitan Foods, Inc, dba Driscoll Foods, Inc.

STATE OF NEW YORK

OFFICE OF GENERAL SERVICES

AGREEMENT #PC66400

CENTRALIZED CONTRACT FOR THE ACQUISITION OF FOOD (RETAIL FOR DOWNSTATE REGION)

THIS FIRST AMENDMENT (hereinafter the "First Amendment") by and between the People of the State of New York, acting by and through the Commissioner of the Office of General Services (OGS), whose office is on the 41st Floor, Tower Building, Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242 (hereinafter referred to as the "State" or "OGS") acting pursuant to authority granted under State Finance Law §163, and Metropolitan Foods, Inc. d/b/a Driscoll Foods, having its principal place of business at 174 Delawanna Avenue, Clifton, New Jersey, 07014 (hereinafter referred to as the "Contractor"). OGS and the Contractor are collectively referred to as the "Parties."

WHEREAS, the Parties heretofore entered into Contract # PC66400 (hereinafter the "Contract") effective March 24, 2014 for Retail Food and Non-Food Items in the Downstate Region, as that term is defined in the Contract; and

WHEREAS, the Parties have agreed to enter this First Amendment to clarify certain obligations under the Contract; and

NOW THEREFORE, in consideration of the terms hereinafter mentioned and also the mutual covenants and obligations moving to each Party hereto from the other, the Parties hereby agree as follows:

SECTION 1. Section 25 of the Contract, Invoicing, is deleted in its entirety and replaced with the following:

SECTION 25 INVOICING

Contractor invoices must include detailed line item information to allow Authorized Users to verify delivered pricing matches the correct price on the date of delivery. At a minimum, the following fields must be included on all invoices to Authorized Users:

- Order Date;
- Authorized User's Purchase Order Number or Authorized User's Annual Blanket Purchase Order Number (as such information is provided by the Authorized User);
- SKU Number;
- Description;
- NYS Net Delivered Price separated by order date;
- Contractor's Federal ID Number, and
- NYS Vendor ID Number.

SECTION 2. Section 31 of the Contract, Minimum Order, is deleted in its entirety and replaced with the following:

SECTION 31 MINIMUM ORDER

Minimum order is $300 for delivery to a single location. The $300 minimum is for aggregate total of all products delivered to one location; products may be on more than one purchase order, products may be on more than one invoice.

All orders shall be labeled and packaged adequately to assure safe handling and proper delivery. Authorized Users shall be advised to combine orders to meet the minimum order. Contractor shall not be required to identify and combine multiple orders received from various departments within a single Authorized User in order to meet the minimum. Contractor may choose to honor orders for less than the minimum order if multiple orders, under the minimum, are delivered on the same day to the same Authorized User.

There shall be no additional charges, fees, delivery costs, etc., for back orders (product previously ordered and not delivered by contractor). Contractor may elect to honor orders for less than the minimum order.

SECTION 3. Except as herein modified, all terms of Contract # PC66400 as amended shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties have caused this First Amendment to be executed on the date set forth below, effective on the date set forth above, and the persons signing represent and warrant that they are duly authorized to sign on behalf of the respective parties.

Contract Number: PC66400

Agency Certification

"In addition to the acceptance of this First Amendment, I also certify that original copies of this signature page will be attached to all other exact copies of this First Amendment."

METROPOLITAN FOODS, INC.
D/B/A DRISCOLL FOODS

By _____

Name: ___Tim Driscoll_____

Title: ____President_____

Company Name: Metropolitan Foods dba Driscoll Foods

Federal I.D. No: __22-3482240_____

Date: _____7/30/14_____

THE PEOPLE OF THE STATE OF NEW YORK

By _____

Sean Hume

Assistant Director

Office of General Services

New York State Procurement

Date: _____7/4/14_____

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

STATE OF New Jersey }

: **SS.:**

COUNTY OF Passaic }

On the _29th___ day of _____July_____ in the year 2014 , before me personally appeared _____**TIM DRISCOLL**_____ , known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that he maintains on office at _____Metropolitan Foods dba Driscoll Foods _____174 Delawanna Ave._____, Town of _____Clifton NJ _____ , County of ____Passaic_____ , State of ____ New Jersey _____ ; and further that:

[Check One]

(☐ **If an individual):** _he executed the foregoing instrument in his/her name and on his/her own behalf.

X **If a corporation):** _he is the ____President_____ of __ Metropolitan Foods dba Driscoll Foods ____ , the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, _he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

(☐ **If a partnership):** _he is the _____ of _____, the partnership described in said instrument; that, by the terms of said partnership, _he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

(☐ **If a limited liability company):** _he is a duly authorized member of _____, LLC, the limited liability company described in said instrument; that _he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Nancy A Cook

NANCY A COOK
ID # 2429748
NOTARY PUBLIC
STATE OF NEW JERSEY
My Commission Expires Feb. 6, 2018

Notary Public

Registration No.