



Office of General Services Procurement Services

Corning Tower, Empire State Plaza, Albany, NY 12242 | <https://ogs.ny.gov/procurement> | customer.services@ogs.ny.gov | 518-474-6717

Contract Award Notification

Title	:	Group 02450 Fresh Bread (Statewide) Classification Code(s): 50
Award Number	:	<u>23146</u> (Replaces Award 22407)
Contract Period	:	May 1, 2019 through October 31, 2024
Bid Opening Date	:	November 7, 2018
Date of Issue	:	April 25, 2019 (Revised March 8, 2024)
Specification Reference	:	As Incorporated in The Invitation for Bid
Contractor Information	:	Appears on Page 2 of this Award

Address Inquiries To:

State Agencies & Vendors	Political Subdivisions & Others
Name : Sara Welsh Title : Contract Management Specialist Phone : 518-474-8102 Email : Sara.Welsh@ogs.ny.gov	Procurement Services Customer Services Phone : 518-474-6717 E-mail : customer.services@ogs.ny.gov

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

Description

This Contract Award Notification contains a subset of information from the Invitation For Bids (IFB). The resulting Contract from IFB 23146 has been executed by Contract Award Letter. Complete Contract details including terms and conditions can be found in the IFB document.

No award was made to the Downstate Region.

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 award.

This award contains MWBE goals of 0% MBE and 0% WBE.

PR # 23146

OGS CONTRACT NUMBER	CONTRACTOR INFORMATION	
PC68488	Bimbo Bakeries USA, Inc. 1 Petra Lane Albany, NY 12205 Federal Identification: 752491201 NYS Vendor Identification: 1100111363	Contact Information: Edward Pinkerton E-mail: Edward.pinkerton@grupobimbo.com Phone: 518-456-4958 ext. 21 Toll Free: 800-818-4772 ext. 21 Website: www.bimbo Bakeries USA.com
<ul style="list-style-type: none"> • Electronic Access Ordering is available • Contractor accepts NYS Purchasing Card orders with a minimum purchase amount of \$50. • No additional prompt payment discount is offered at this time. 		

Cash Discount, If Shown, Should be Given Special Attention.

INVOICES MUST BE SENT DIRECTLY TO THE ORDERING AGENCY FOR PAYMENT.

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

SMALL, MINORITY AND WOMEN-OWNED BUSINESSES

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

RECYCLED, REMANUFACTURED AND ENERGY EFFICIENT PRODUCTS

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

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

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

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

SCOPE

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 Contract.

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

NOTE: No award has been made to the Downstate Region at this time.

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, Schuyler, Seneca, Steuben, Wayne, Wyoming, and Yates

DEFINITIONS

Capitalized terms used in this Contract 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 (“NYSPPro”) 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”.

CONFLICT OF TERMS

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

1. Appendix A (June 2023) (Standard Clauses for NYS Contracts);
2. Second Amendment for Contract No. PC68488;
3. First Amendment for Contract No. PC PC68488;
4. Contract Award Letter;
5. Invitation for Bids #23146 including all Appendices and Attachments referenced therein;
6. Appendix C (July 2021) Federal Funding Agency Mandatory Terms and Conditions;
7. Contractor’s Bid Prices for the Central Region, Eastern Region, and Western Region;
8. Contractor’s Bid

SPECIFICATIONS**GENERAL**

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

Contractor 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 Contract.

The Contractor 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.

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

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 agency.

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.

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.

FDA NUTRITIONAL 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

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 Contractor'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 Contractor 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.

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

QUALITY CONTROL AND SAFETY

Contractor 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/04cir933/goodmanufpracticesCIR933.htm>, and Sanitation Standard Operating Procedures (SSOP) which can be found here: http://www.fsis.usda.gov/PDF/SSOP_module.pdf

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

Contractor 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.

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.

CONTRACT TERM AND EXTENSIONS

The Contract will be in effect for a term of up to five (5) years. All OGS Centralized Contracts resulting from Solicitation #23146 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.

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.

PRICE

Prices by Region are on the Contractor Information pages of this Award on the OGS website. Prices shall be net, including transportation, customs, tariff, delivery and other charges fully prepaid by the Contractor to the destination indicated on the Purchase Order.

PRICE UPDATES

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

Beginning August 1, 2019, Contractor may update their pricing every three months, in accordance with the Producer Price Index (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 (BLS), Washington D. C. 2012. New product additions may be approved based on proof of reasonableness of price as outlined in Price List Format below. However, new product additions are not to subject to PPI adjustment until the next price update time period.

The first price update is to be calculated by taking the PPI value for the month of April 2019, dividing that value by the PPI value for September 2017 (September 2017 shall be the base month and year to be used for the first calculation). Resultant figure for the quotient shall be rounded to the third decimal place,

then multiplied by original awarded bid prices. The resultant new pricing shall be rounded to the second decimal place.

After the first price update, subsequent price updates are to be calculated as follows: The price update will be based upon the pricing that was in effect three months prior to the new price update time period. Quotient multiplier shall be found by dividing PPI value from four months prior to the first month of the applicable price update time period, by the PPI value seven months prior to the applicable price update time period, and rounded to the third decimal place, then multiplied by the pricing that was effective three months prior to the new price update time period. The resultant new pricing shall be rounded to the second decimal place.

Below is a table illustrating pricing updates for the first year of the five (5) year contract term:

Applicable Quarterly (3 months) Price Update Time Period	Effective date for Adjustment	Base/reference PPI month	Comparing/Adjustment PPI Month	Base Prices
5/1/2019 - 7/31/2019	No Adjustment	N/A	N/A	N/A
8/1/2019 - 10/31/2019	8/1/2019	9/2017	4/2019	Original bid prices
11/1/2019 - 1/31/2020	11/1/2019	4/2019	7/2019	8/1/2019
2/1/2020 - 4/30/2020	2/1/2020	7/2019	10/2019	11/1/2019
5/1/2020 - 7/31/2020	5/1/2020	10/2019	1/2020	2/1/2020

An example of a price update calculation for a requested pricing update effective February 1, 2020 follows. **(All figures used are for illustrative purposes only.)**

Base Price per Loaf (Effective November 2019): \$0.75
 PPI (PCU31181) October 2019: 208.3
 PPI (PCU31181) July 2019: 199.7
 October 2019 divided by July 2019: $208.3 / 199.7 = 1.043$
 Quotient multiplied times Current Price: $\$0.75 \text{ times } 1.043 = \$0.782 = \$0.78$
 New price effective February 1, 2020: \$0.78

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

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

Contractors may reduce their pricing any time during the contract term.

OGS reserves the right to revise the frequency or process for pricelist updates at its sole discretion with thirty (30) days' notice to the Contractor.

PRICE LIST 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.

NYS Unit Price must be reasonable. Contractor must provide documentation of reasonableness of price for each product being added in a pricelist update. Acceptable documentation of reasonableness of price includes comparable government contract price lists and/or paid invoices issued to federal, state, or local government entities. Such invoices shall be dated no earlier than twenty-four (24) months prior to the first month of the new price update time period, for which Contractor is requesting products being added.

OGS reserves the right to conduct additional research and request additional information to verify the information provided and/or assess the reasonableness of pricing. If verification shows that pricing is not equal to or better than pricing offered to other government entities, a product may not be offered on contract.

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.

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.

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).

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.

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>.

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.

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.

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.

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.

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.

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.

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.

RECALLED PRODUCTS

The Contractor shall have the ability to track all products delivered. The Contractor 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 Contractor is responsible for picking up and replacing all products that are subject to recall, and insuring that all manufacturers and suppliers to the Contractor 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.

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.

CONTRACT ADMINISTRATION

The Contractor 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. Contractor shall also provide an Emergency Contact in the event of an emergency occurring after business hours or on weekend/holidays.

Contractor 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 it's 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.

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/>.

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.

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.

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: <https://ogs.ny.gov/MWBE/Forms>

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.

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.

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 (NYSPSP), 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.

NYS VENDOR RESPONSIBILITY

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.

“OGS OR LESS” GUIDELINES

Purchases of the Products included in the 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.

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.

EXTENSION OF USE

The Contract 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

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.

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.

DRUG AND ALCOHOL USE PROHIBITED

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

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.

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.

**State of New York
Office of General Services
PROCUREMENT SERVICES
Contract Performance Report**

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

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

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

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

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

CONTRACTOR

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

Comments: _____

_____(over)

Agency: _____ Prepared by: _____

Address: _____ Title: _____

_____ Date: _____

_____ Phone: _____

_____ E-mail: _____

Please complete and return via email to sara.welsh@ogs.ny.gov or mail to:

OGS PROCUREMENT SERVICES
Customer Services, 38th Floor
Attn: Sara Welsh
Corning Tower - Empire State Plaza
Albany, New York 12242

* * * * *