



Office of General Services Procurement Services

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Revised Contract Award Notification

Title	: Group 02450 Food (Commercial and Retail) (Statewide) Classification Code(s): 50
Award Number	: 23199 (Replaces Awards 22794 & 22688)
Contract Period	: June 19, 2020 through June 18, 2025
Bid Opening Date	: March 19, 2020
Date of Issue	: June 19, 2020 (Revised April 05, 2024)
Specification Reference	: As Incorporated in the Solicitation
Contractor Information	: Appears on Page 2 of this Award

Address Inquiries To:

State Agencies & Vendors	Political Subdivisions & Others
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**Procurement Services values your input.
Complete and return "Contract Performance Report" at end of document.**

Description

Note: This Contract Award Notification contains a subset of information from the Solicitation. The resulting Contracts from Solicitation 23199 have been executed by Contract Award Letter. Complete Contract details including terms and conditions can be found in the Solicitation document dated revised March 12, 2020.

This award allows for the purchase of Food and Non-Food products in the following Lots: Lot 1: Commercial (bulk), and Lot 2: Retail (grocery).

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

There are no SDVOB Goals on this Contract.

PR # 23199

NOTE: See individual contract items to determine actual awardees.

OGS CONTRACT NUMBER	CONTRACTOR	FEDERAL ID #	NYS VENDOR ID #
PC69153 Cancelled May 02, 2022	Ace Endico Corp.	133116470	4000006304
PC69154	Metropolitan Foods Inc. dba Driscoll Foods	223482240	1000008850
PC69155 Cancelled April 02, 2024	Renzi Bros., Inc. dba Renzi Foodservice	161610963	4000005104
PC69156	H. Schrier & Co., Inc.	112854301	1000054374
PC69157	Sysco Albany LLC	743066312	1000032545
PC69158	Sysco Long Island LLC	900348986	1100078152
PC69159	Sysco Syracuse, LLC	743066696	1000009662
PC70144 Contract start date: April 03, 2024	US Foods, Inc. dba Renzi Foodservice	363642294	1000017758

Lot(s)/Region(s) Awarded:

CONTRACTOR	LOT 1 - COMMERCIAL				LOT 2 - RETAIL			
	Central	Downstate	Eastern	Western	Central No bids received	Downstate	Eastern No bids received	Western No bids received
METROPOLITAN FOODS, INC. DBA DRISCOLL FOODS		X	X			X		
US FOODS INC. DBA RENZI FOODSERVICE	X							
H. SCHRIER & CO., INC.		X	X					
SYSCO ALBANY LLC			X					
SYSCO LONG ISLAND LLC		X						

SYSCO SYRACUSE, LLC	X			X				
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For complete Contractor information and Pricing information for this Award, please see the Contractor Information page located on the OGS Website at:
<https://online.ogs.ny.gov/purchase/spg/awards/0245023199CAN.HTM>

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

**INVOICES MUST BE SENT DIRECTLY TO THE ORDERING AGENCY FOR PAYMENT.
 (See "INVOICING AND PAYMENT" in this document.)**

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).

CONFLICT OF TERMS

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

- Appendix A, Standard Clauses for New York State Contracts;
- The Revised Contract Award Letter Dated November 30, 2021;
- The Solicitation (Revised 03/12/2020);
- Appendix B, General Specifications;
- Appendix C, Federal Funding Agency Mandatory Terms and Conditions;
- All other appendices and attachments to the Solicitation (Revised 03/12/2020);
- Contractor’s Bid Prices as published by OGS.

OVERVIEW

This Contract provides Authorized Users with a means of acquiring food and non-food items by New York State Agencies and Non-State Agencies, including political subdivisions, school districts and others authorized by law (See Sections titled *Non-State Agencies Participation in Centralized Contracts* and *Extension of Use*). Products for purchase by all Authorized users are described in the Section titled *Scope*. Procurement instructions describing requirements for Authorized Users to purchase from the Centralized Contract are found in the Section titled *Procurement Instructions*.

SCOPE

It is the intent of this Contract to establish multiple Contracts for the following two (2) Lots for each Region as described in Section titled *Regions*. Categories of Products within each Lot are listed below:

Lot # and Title	Food and Non-Food Product Categories
1. Commercial (bulk)	a. Ambient, Canned, Dry b. Baked Goods c. Dairy d. Frozen (Includes prepared foods and entrees; frozen eggs, frozen vegetables and fruits, frozen meats, and frozen juices) e. Meat, Poultry & Fish (Fresh, including breaded Products) f. Non-Food g. Produce
2. Retail (grocery)	a. Ambient, Canned, Dry b. Baked Goods c. Dairy d. Frozen (Includes prepared foods and entrees; frozen eggs, frozen vegetables and fruits, frozen meats, and frozen juices) e. Meat, Poultry & Fish (Fresh, including breaded Products) f. Non-Food g. Produce

EXCLUSIONS:

Items which are sold by Bidders, but do not fit into these categories are excluded from purchase through the Contracts resulting from Solicitation 23199. Alcoholic beverages are expressly excluded from the scope of the resultant Contracts.

REGIONS

For the purposes of Contracts resulting from Solicitation 23199, the counties of New York State are divided into four (4) separate “Regions”. Below is a listing of the Regions and the applicable counties that are included in each of the Regions.

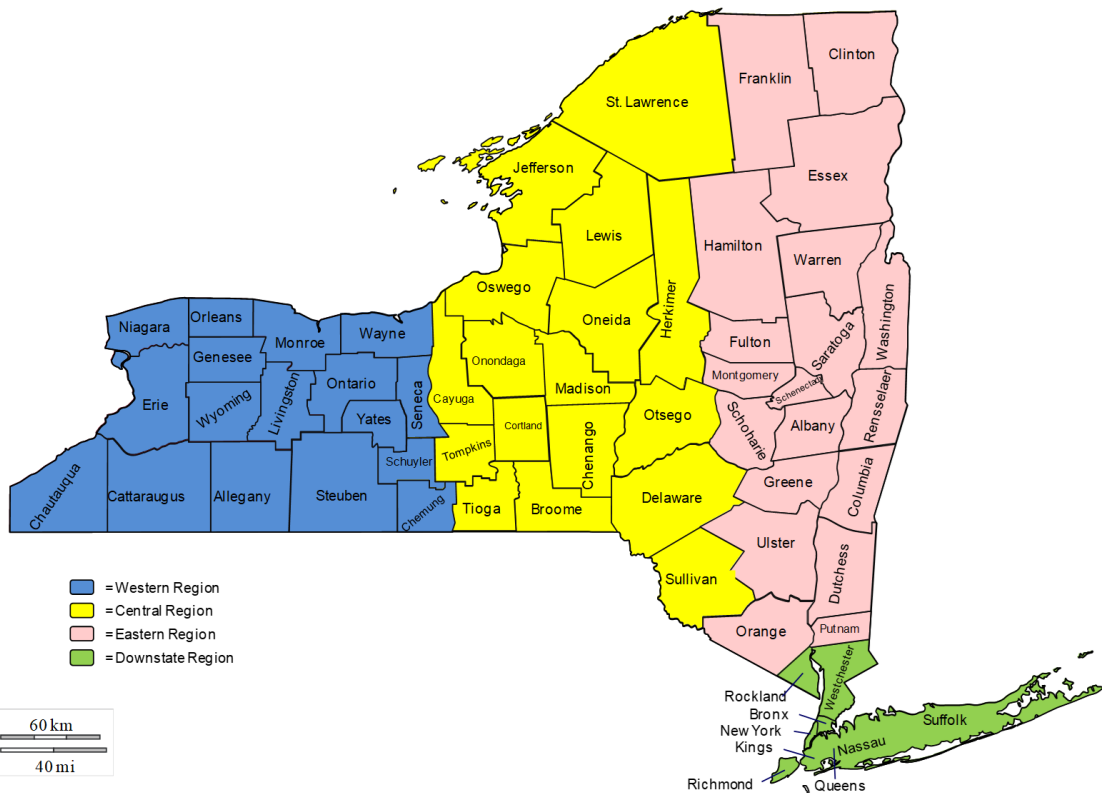
The four Regions are:

Central Region: Broome, Cayuga, Chenango, Cortland, Delaware, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, Otsego, Saint Lawrence, Sullivan, Tioga, and Tompkins counties

Downstate Region: Bronx, Kings, Nassau, New York, Queens, Richmond, Rockland, Suffolk, and Westchester counties

Eastern Region: Albany, Clinton, Columbia, Dutchess, Essex, Franklin, Fulton, Greene, Hamilton, Montgomery, Orange, Putnam, Rensselaer, Saratoga, Schoharie, Schoenectady, Ulster, Warren, and Washington counties

Western Region: Allegany, Cattaraugus, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Wayne, Wyoming, and Yates counties



PROCUREMENT INSTRUCTIONS TO AUTHORIZED USERS

The resultant Contracts will be centralized Contracts issued under a multiple award structure for each of the Lots described in the Section titled *Scope*. Products offered under the Contracts, pricing, and other Contract information will be posted to the OGS website and, if applicable, the awarded Contractors’ dedicated NYS websites. Authorized Users shall procure Products that best meet their form, function and utility requirements.

Before proceeding with their purchase, Authorized Users shall check the list of Preferred Source offerings and are reminded that they must comply with State Finance Law, particularly § 162, regarding commodities/services provided by preferred source suppliers.

If the needed Products are not available in the desired form, function and utility from a Preferred Source, the Authorized Users are encouraged to obtain quotes from all awarded Contractors within the applicable Region prior to making a purchase. The Authorized User shall review the responses from Contractors able to provide the necessary Products and shall select the most practical and economical alternative that is in the best interest of the State from among such responses in accordance with State Finance Law § 163(10)(c). The Authorized User shall document its procurement decisions in its procurement record.

Authorized Users will issue Purchase Orders directly to the Contractor and specify any shipping/delivery requirements.

When placing Purchase Orders under the Contract(s), the Authorized User should be familiar with and follow the terms and conditions governing the use of the Contract(s). The Authorized User is responsible for compliance with the requirements of public procurement processes. The Authorized User, when purchasing from OGS Contracts, should hold the Contractor accountable for 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, and such documentation should include: statement of need and associated requirements; all necessary prior approvals; a summary of the Contract alternatives considered for the purchase; and the reason(s) supporting the resulting purchase (e.g., show that 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).

Upon Authorized User acceptance of Products itemized on the Purchase Order, Contractor will invoice Authorized User for any portion of Products accepted, and accordingly, Authorized User will arrange for payment. Contractor shall provide itemized invoicing for all Products.

Note: Contractor must disclose prior to acceptance of an order any forms or other order information that Contractor will attach to orders or require to be completed with Authorized User purchases. Documents which contain additional terms or conditions must receive pre-approval by the Authorized User. Additional terms or conditions that were not pre-approved by the Authorized User or which conflict with the Contract terms and conditions are void and unenforceable at the sole discretion of the State.

ESTIMATED QUANTITIES

This Contract is an estimated quantity Contract. No specific quantities are represented or guaranteed, and the State provides no guarantee of individual Authorized User participation. The Contractor must furnish all quantities actually ordered at or below the Contract prices. The anticipated dollar value of the award for this Solicitation, based on historical purchases under previous awards, is approximately \$74 million annually, for Lots 1 and 2 on a statewide basis. The individual value of each resultant Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered. Authorized Users will be encouraged to purchase from Contractors who offer the Products and pricing that best meet their needs in the most practical and economical manner. See Appendix B, *Estimated/Specific Quantity Contracts and Participation in Centralized Contracts*.

Numerous factors could cause the actual quantities of Products purchased under a Contract resulting from Solicitation 23199 to vary substantially from the estimates in Solicitation 23199. Such factors include, but are not limited to, the following:

- Such Contracts may be non-exclusive Contracts.
- There is no guarantee of quantities to be purchased, nor is there any guarantee that demand will continue in any manner consistent with previous purchases.

- The individual value of each Contract is indeterminate and will depend upon actual Authorized User demand and actual quantities ordered during the contract period.
- The State reserves the right to terminate any Contract for cause or convenience prior to the end of the term pursuant to the terms and conditions of the Contract.
- Contract pricing that is lower than anticipated could result in a higher quantity of purchases by Authorized Users than anticipated.
- Contract pricing that is higher than anticipated could result in a lower quantity of purchases by Authorized Users than anticipated.

Contractor acknowledges the foregoing and agrees that actual good faith purchasing volumes during the term of this Contract could vary substantially from the estimates provided in Solicitation 23199.

DEFINITIONS

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

“Baked Goods” shall refer to Products comprised of fresh bread including, but not limited to, bread loaves, various rolls, pastries and muffins.

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

“Categories” shall refer to classifications given to each Product to define which percent markup is applied within each of the Lots. Categories for each Lot are detailed in Section titled *Percent Markup*.

“Cost of Product” shall be defined as the cost paid by the Contractor to its supplier/manufacturer/processor for the Product.

“Food” shall refer to Products that are edible.

“Incoming Freight” is defined as common or contract carrier charges billed to the Bidder by a third-party vendor or a third-party carrier, or charges billed to the Contractor by a freight management service operated by an affiliated corporation of the Contractor for shipping costs from the supplier to the Contractor’s warehouse.

“Lots” shall refer to several items bid as a single group. For the purposes of this Contract, there are two separate Lots: Lot 1, Commercial (Statewide), and Lot 2, Retail (Statewide).

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

“New York State Food Product” shall refer to commodities that are Food, including milk and milk Products, grown, produced, harvested, or processed in New York state.

“Non-Food” shall refer to Products that are not edible but related to the handling, preparing or dispersing of food items. Such as paper and disposable Products; small ware and equipment.

“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).

“**Price Guides**” is a complete Product line listing created and maintained by the Contractor. The Price Guide contains “NYS Net Delivered Price” for NYS Authorized Users and shall be updated as listed herein under Section titled *Price Changes*.

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

“**Regions**” for the purposes of this Contract, New York State is divided into four regions: Central, Downstate, Eastern and Western.

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

CONTRACT TERM AND EXTENSIONS

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

All OGS Centralized Contracts resulting from Solicitation 23199 shall have a co-terminus end date, including those Contracts awarded during any subsequent periodic recruitment. At the State’s option, the Contract may be extended for five (5) years, in increments as deemed to be in the best interest of the State. Whether the optional extensions are exercised is at the sole discretion of the State. A Contractor shall retain the right to decline a Contract extension offered under this section. Any Contract extension will be under the same terms and conditions, subject to any additional applicable statutory and policy requirements. Any extensions provided under this section shall apply in addition to any rights set forth in Appendix B, *Contract Term – Extension*.

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

OGS reserves the right to terminate Contractors for convenience after one-year as set forth in Appendix B, *Termination*, if their Contract sales are less than \$200,000 for Lot 1 – Commercial, and \$100,000 for Lot 2 – Retail.

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.

PERIODIC RECRUITMENT

This Contract allows for periodic recruitment of additional Contractors during the term of the Contract. Recruitment periods are optional at the discretion of the State. Additional recruitment periods will be advertised in the NYS Contract Reporter. Bidder must register with the New York State Contract Reporter at <https://www.nyscr.ny.gov> in order to receive notifications regarding any periodic recruitments under this Solicitation. Bids shall be evaluated under substantially the same terms and conditions as the original Bids. Bidders shall also be required to submit necessary documentation for any additional applicable statutory requirements in effect at the time of the new Solicitation.

Once awarded a Contract, a Contractor may not resubmit a Bid for future consideration for Products covered by the scope of the awarded Contract. In addition, if a Bid is deemed non-responsive during the initial Solicitation or any recruitment period, a Bidder cannot reapply for a future Contract until the next recruitment period.

SPECIFICATIONS**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 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.

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 the Contract.

Lot Specific Requirements**Lot 1 – Commercial Requirements**

Ability to Provide Emergency Service:

Some Authorized Users may, on occasion, require emergency same-day service either for direct delivery or Authorized User pick-up of Products. Contractor shall have staff, or an emergency contact available on a 24-hour basis. In the event of a Gubernatorial declared emergency in accordance with Executive Law §28, Contractor shall coordinate with the Authorized Users for emergency contingency plans. The State reserves the right to request proof of such emergency contingency plans.

Delivery After Receipt of Order:

Unless otherwise arranged with Authorized User, regular delivery days will be scheduled as far as three weeks in advance. However, Contractor may be required to add to existing orders or deliver new orders for next business day delivery.

Lot 2 – Retail Requirements

Delivery After Receipt of Order:

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

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

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

Lots 1 and 2 Grades & Specifications

All Products offered shall be grade B or better, unless otherwise specified.

For meat Products, the State recognizes there are different grades of beef, pork and lamb available in the industry. All Products (beef, pork and lamb) offered for the bid shall be "USDA Select or Better". For poultry Products, Bidder must provide "USDA Grade A. All frozen vegetables shall be individually quick frozen (IQF), spec bulk pack.

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.

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 Product 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.

Labeling and Nutritional Information Specification

Any Food Product listed on the Price Guides under the resultant Contracts must meet the FDA labeling guidelines unless otherwise specified by the ordering Authorized users. Contractor must supply ingredient list and nutritional analysis on their website and/or by providing a nutritional analysis within 48 hours upon request of OGS and/or Authorized users.

Executive Order 4 Approved Specifications for Food

NYS Executive Order Number 4 imposes certain requirements on State Agencies, authorities, and public benefit corporations when procuring Products. Please see Section titled *Environmental Attributes and NYS Executive Order Number 4*, for details. Contractors are encouraged to stock and furnish the following items that meet the Executive Order Approved Specification.

Food Service Containers and Wrappers

The following are covered Products: containers and wrappers used to serve food, including but not limited to plates, bowls, hot and cold cups (including portion cups, lids and insulating sleeves); sandwich or other types of food wrappers made of paper, aluminum or other materials; food trays and liners; and food take-out containers with hinges, folding closures, or lids (e.g., clamshells, boxes, and soup containers). The specification does not cover containers or wrappers used at food processing locations or used to ship food to retail or service locations. The specification does include requirements and desirable attributes for packaging used to ship empty food service containers to food service locations.

Link to the specifications of these items:

<https://ogs.ny.gov/system/files/documents/2018/08/foodservicecontainerswrappers.pdf>

Single Use Food Service Utensils

Covered Products: Light to heavy weight duty, single-use utensils (spoons, forks, knives, soup spoons). Link to the specifications: <https://ogs.ny.gov/greeny/single-use-food-service-utensils>

PRICE**NYS Net Delivered Price**

“NYS Net Delivered Price” is computed as follows:

1. The Contractor supplier cost (equal to the last invoiced Cost of Product plus Incoming Freight minus applicable Allowance) multiplied by the Category Percent Markup results in “markup in dollars”.

2. The “markup in dollars” is then added to the bidder supplier cost to calculate the “NYS Net Delivered Price”.

The same formulas are used for all Products in the Price Guides (being the same to each location regardless of shipping point).

The Distribution Center(s), as set forth with the Bid shall be used throughout the Contract term. In the event the distribution center location changes, Contractor must obtain prior approval from OGS.

Contractor Supplier Cost

The Contractor Supplier Cost shall be the last invoiced cost for each item. Contractor shall include the most recent cost of each item on each Price Guide.

Contractor shall be required to aggressively monitor costs (including but not limited to price increases and any applicable rebates, allowances, etc. impacting Supplier Cost, or NYS Net Delivered Price) in comparison with market conditions, State usage, supplier pricing and Authorized User requests and to negotiate decreases, seek competition, or change suppliers as necessary to ensure the best value for the State in the most efficient, effective procurement manner.

Negotiated Pricing on Behalf of OGS

For any Food related Products where pricing has been negotiated on behalf of NYS, OGS strongly encourages all manufacturers and/or suppliers release all pricing, allowances, rebates, etc. to Contractors.

Percent Markup

Contractor’s percent markup shall include, but not be limited to, any and all costs necessary to successfully serve all NYS Authorized Users, such as:

- delivery to the door at facilities where there is no dedicated receiving dock
- palletized or cart/hand truck delivery as required by Authorized User (see Section titled *Product Delivery*)
- “restricted” delivery (see Section titled *Restricted Delivery*)
- use of appropriate vehicles to accommodate site limitations
- compliance with local ordinances and restrictions
- furnishing special packaging for certain Authorized Users security requirements
- maintenance and furnishing of updated Price Guides for all Lots, including special designations by Product as needed, and web-based ordering system (for Lot 1 and Lot 2)

Contractor must offer all Categories within the Lot(s)/Regions for which they have been awarded.

Markups shall be automatically applied to the listed Products.

The percent markup bid shall not exceed two decimal places (e.g., 6%, 6.5%, 6.25% are permitted; 6.875% is not permitted). Any percent markup bid which goes beyond the allowed decimal place shall be rounded to the second decimal place (i.e. 6.246% shall be rounded to 6.25% and 7.232% shall be rounded to 7.23%). The percent markup must be between 0.00% and 100.00%

Percent markup for all Products, shall not increase during the resultant Contract award. A decrease in percent markup is permitted at any time.

New York State Bottle Bill

Contractor's shall collect a bottle deposit fee as necessary. Contractors are only permitted to charge Authorized Users the bottle deposit fee they paid. The bottle deposit fee shall not be included on the price guides and should be added to the invoice as a separate line item. The Contractor may need to provide additional information, such as invoices, as justification for any bottle fees over five cents per bottle. For additional information, please visit <https://www.dec.ny.gov/chemical/8500.html>.

Incoming Freight

After issuance of award and throughout the Contract period, a Contractor may be required to demonstrate the reasonableness of the method of freight chosen, is the best value for the State. The State reserves the right to determine that the lowest price available should be applied if Contractor selects a shipping methodology that is higher than common carrier published rates charged for similar deliveries.

Allowances

Applicable allowances shall include those granted to Contractor and shall be defined as:

- Any manufacturers/suppliers credits, allowances or rebates shown on the invoice to the Contractor that reduce Supplier Cost, or NYS Net Delivered Price
- Governmental and non-profit promotions, discounts or allowances
- Special negotiated pricing agreements for NY State
- Volume discounts negotiated directly by OGS or Authorized Users
- New York State's proportional allocation of a Contractor's discounts or rebates for aggregate volume or growth programs, or additional reductions based upon size of order and deliveries by Supplier to the Contractor.

The State must directly benefit from any price reductions, credits, refunds or other rebate pass-throughs from all applicable allowances including those obtained by Bidder/Contractor. If a Bidder is able to capture any allowances due to NY State volume, it is required to use the additional savings to lower "NYS Net Delivered Price" by specifically enumerating the allowances.

Allowances shall not include earned income rebates such as merchandising, freight management, consolidated warehousing distributions, or other value-added logistical, promotional or operational services, etc.

All applicable allowances must be passed through to the State whether or not such allowances are presented in Bidder's Bid or Price Guides.

In the event that the Contractor receives applicable allowances, credits or rebates on Products after the Product is invoiced to the Authorized User, the Contractor is required to apply a credit to a future invoice for the respective purchaser or some other form of reimbursement, in an amount equivalent to the value of the rebate. In the event that a credit is not applied, reimbursement may be made via a year-end payment of applicable allowances. The amount paid would be based on a calculation of the applicable allowance earned but not included as a reduction in cost at the time Contract prices were established. The amount an individual entity would be reimbursed is directly related to their portion of spend on the Products that qualify for the applicable allowance.

Rounding Calculations for Determining Costs and Final Price

All prices used to determine "NYS Net Delivered Prices" are to be rounded to no more than two decimal places. Any quoted price which goes beyond the allowed decimal place shall be rounded to the second decimal place (i.e. \$6.246 shall be rounded to \$6.25 and \$7.232 shall be rounded to \$7.23).

Rebates

The State reserves the right to determine the disposition of any rebate settlement, restitution, liquidated damage, etc. which arise from the administration of this Contract.

Packaging/Container Security Requirements for Selected Authorized Users

Correctional facilities, and other self-identified Authorized Users, require packaging and containers that minimize possible security problems (i.e., do not include wire, metal, sharp edges, glass, etc., that may possibly be fashioned into a weapon). Contractor and Authorized User shall mutually agree to modify and/or change packaging and/or containers for delivery to some locations, in order to reduce potential security risks. There shall be no additional charge for Contractor's packaging or containers used to meet security requirements.

PURCHASES FROM PRICE GUIDE

Authorized Users are to make purchases from the Contractor's Price Guide identified in Section titled *Price Guides*. Prices established in the Price Guide shall be calculated as described in Section titled *Price*, using cost as defined in Section titled *Contractor Supplier Cost*.

Price Guides

The Price Guides shall include all Products regularly stocked by Contractor that are provided to the trade in general for the specific Lots they were awarded.

Price Guides shall include at least the following fields:

- Product Category (i.e., Dairy, Produce, Meat/Poultry/Fish, Frozen, Baked Goods, etc.);
- Product Brand or Manufacturer;
- Product Stock Number;
- New York State Product;
- Product Description;
- Unit of Measure;
- Pack/Quantity;
- Size;
- Supplier Cost;
- Incoming Freight if not included in Delivered Price;
- Applicable Allowances as defined in Section titled *Allowances*, Applied Per Item;
- Percent Markup;
- Markup in Dollars; and
- "NYS Net Delivered Price" (as defined in Section titled *Price*).

Price Guides will be reviewed and verified against current market prices to ensure that the State is receiving pricing that is reasonable when compared with the industry at large. Please also see Section titled *Price Changes*.

Price Guides shall be updated weekly and monthly, as required in Section titled *Price Changes*. 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. 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.

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 or Product add/delete). Contractor may elect to continue using the previous Price Guide as long as it remains current. When the Contractor elects to use the previous Price Guide, Contractor must notify OGS in writing that there were no changes to the Price Guide and Contractor is using the previous 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. However, OGS reserves the right to remove Products if it deems the prices unreasonable or not within the scope of the Contract. 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 Section titled *Price Changes*, shall not be permitted.

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

Price Changes

Prices established in the Price Guide shall be calculated as detailed in Section titled *Price*, (less applicable allowances etc.). Adjustments (increases or decreases) shall be made as shown below:

Lot	Category	Adjustment Frequency
Lot 1- Commercial	Dairy	Weekly
	Produce	Weekly
	Meat, Poultry and Fish	Weekly
	Frozen	Monthly
	Ambient, Canned and Dry	Monthly
	Baked Goods	Monthly
	Non-food	Monthly
Lot 2 - Retail	Dairy	Weekly
	Produce	Weekly
	Meat, Poultry and Fish	Weekly
	Frozen	Monthly
	Ambient, Canned and Dry	Monthly
	Baked Goods	Monthly
	Non-food	Monthly

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

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 hours 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.

In instances where Contractor has participated 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 Category Markup for the appropriate Category. 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 also Section titled *Reporting*.

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.

PRICE STRUCTURE

If, during the Contract Term, the Contractor is unable or unwilling to meet contractual requirements in whole or in part based on the price structure of the Contract, it shall immediately notify the Office of General Services, Procurement Services in writing. Such notification shall not relieve the Contractor of its responsibilities under the Contract. The State may, but is not required to, consider an equitable adjustment in the Contract terms and/or pricing in the circumstances outlined in Appendix B, *Savings/Force Majeure*.

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

SAMPLES AND TESTING

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

NEW YORK STATE FOOD PRODUCTS

Bidders and Contractors shall be required to designate New York State Food Products as defined in Section titled *Definitions*, in their Price Guide(s). State Agencies are expected, and New York state public authorities and entities are strongly encouraged, to purchase New York State Food Products, unless the item does not meet their institutional or programmatic needs.

Healthier Food Products (Meet NYS Food Standards/Guidelines)

Contractors may be required to designate whether Food Products meet (or exceed) NYS Food Standards/Guidelines for healthier Food Products.

Designate Healthier Food Products

Contractors are encouraged to designate Healthier Food Products in their Price Guides, based on the NYS food Standards/Guidelines, which will be provided to Contractors by OGS when available.

New York State Education Department NYS Food Products Definition

Contractors may be required to designate whether food Products meet the NYS Department of Education (NYSED) definition of NYS Food Products. The NYS Education Department defines NYS Food Products as: “Any New York State (NYS) Food Product purchased and used in the reimbursable meal for the school lunch program may contribute toward the 30% NYS Initiative. A “NYS Food Product” is defined as:

- A food item that is grown, harvested, or produced in NYS; or
- A food item processed inside or outside NYS comprising over 51% agricultural raw materials grown, harvested, or produced in NYS, by weight or volume.

“Producing” means the producing of food grown upon and/or harvested from the farm or waters through agricultural, horticultural, aquacultural, or dairying processes.

“Processing” means any alteration of a food Product from its raw or original state to enhance its value or render it suitable for consumption. Examples of processing include, but are not limited to, butchering of meat or poultry, and cooking, pasteurizing, and/or packaging food Products,” (NYSED Child Nutrition Program Administration <http://www.cn.nysed.gov/content/additional-state-subsidy-purchasing-new-york-state-food-products>).

Additional information and guidance regarding Additional State Subsidy for Purchasing New York State Food Products for school lunch programs and the “30% NYS Initiative” is located at: <http://www.cn.nysed.gov/content/additional-state-subsidy-purchasing-new-york-state-food-products>

ORDERING

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. 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).

Web-Based Ordering

The Contractor shall maintain a web-based ordering system with the capability of receiving electronic orders from over 5,000 Authorized Users via the internet. The web-based ordering system shall have full order inquiry capabilities and shall acknowledge receipt of an Authorized User's order. Contractor shall be required to post a copy Contract Pricing, on the website. The website link(s) will be listed under the Contractor information on the OGS website. The Contractor's website will be the responsibility of the Contractor to maintain and keep updated. The State reserves the right to request demonstrations of the Contractor's website.

The web-based ordering system must be capable of controlling, documenting and reporting on the following minimum data elements:

- Contractor Name and Address
- Contract Number
- Ordering Agency/Facility/Political Subdivision, etc. and Address
- Purchase Order/Requisition Numbers
- Contact (individual placing order)
- Delivery Location
- Delivery Instructions
- Stock Number
- Manufacturer
- Description
- Unit of Measure
- List Price (unit)
- Net Price (unit)

Accessibility of Web-Based Information and Applications Policy

Contractor is solely responsible for administration, content, intellectual property rights and all materials at Contractor's website. Contractor is solely responsible for its actions and those of its agents, employees, resellers, Subcontractors or assigns, and agrees that neither Contractor nor any of the foregoing has any authority to act or speak on behalf of the State. As applicable, Contractor agrees to comply with the Office of Information Technology Services policy NYS-P08-005 Accessibility of Web-Based Information and Applications, as may be amended, the stated purpose of which is to make State Agency web-based intranet and internet information accessible for persons with disabilities. The following language is incorporated into any Contract resulting from this Solicitation:

Any web-based information and applications development, or programming delivered pursuant to the Contract or procurement, will comply with New York State Enterprise IT Policy NYS-P08-005, Accessibility of Web-Based Information and Applications as such policy may be amended, modified or superseded, which requires that State Agency web-based information and applications are accessible to persons with disabilities. Web-based information and applications must conform to New York State Enterprise IT Policy NYS-P08-005. Quality assurance testing may be conducted by the State and the results of such testing, if performed, must be satisfactory to the State before web-based information and applications will be considered a qualified deliverable under the Contract or procurement.

PURCHASING CARD ORDERS

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

MINIMUM ORDER**Lot 1 - Commercial**

Minimum order is \$1,500 for delivery to a single location. The \$1,500 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.

The Contractor may include an additional fee, for orders below the \$1,500 minimum. The additional fee shall not exceed \$100. Contractor must notify Authorized Users of additional fee and Authorized User must agree prior to acceptance of an order and such costs shall be added to the invoice.

Lot 2 - Retail

Minimum order is \$200 for delivery to a single location. The \$200 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.

Lot 1 – Commercial and Lot 2 – Retail

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.

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.

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 date of delivery. 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/nys-vendors>

PRODUCT DELIVERY

Delivery of all Contract Products shall be made in accordance with Appendix B, *Product Delivery and Shipping/Receipt of Product*.

In Addition, 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.

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.

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.

SMALLER VEHICLE USE FOR DELIVERY – FOR LOT 2 - RETAIL

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.

QUALITY CONTROL AND SAFETY

Contractor shall have Sanitation Standard Operating Procedures (SSOP), as well as 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 Preventive Controls for Human Food Rule a copy of which is available at: <https://agriculture.ny.gov/food-safety/food-safety-modernization-act#contact-food-safety> and Sanitation Standard Operating Procedures (SSOP) which can be found here: https://www.fsis.usda.gov/wps/wcm/connect/4cafe6fe-e1a3-4fcf-95ab-bd4846d0a968/13a_IM_SSOP.pdf?MOD=AJPERES

Upon OGS request, Contractor shall verify that all manufacturers supplying Product have verifiable HACCP programs in place at their manufacturing facilities.

Bidder must provide a recent (within 24 months prior to bid opening) New York State Department of Agriculture and Markets inspection report demonstrating compliance (or acceptable equivalent as determined by OGS) with bid submission, for each distribution center used for the Bid. Bidder shall provide a current New York State food warehouse license (or acceptable equivalent as determined by OGS) with bid submission.

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 Authorized User 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. A final report shall be made to OGS and all Authorized Users' central offices stating number of cases shipped, locations and number of returns.

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.

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, 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.

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

Contractor shall use commercially reasonable standards to provide the Authorized User with the requested Product in the requested time frame no less than 98% on each order. The State reserves the right to request monthly documentation of Contractor's fill rate. Products shipped in error shall not be included in the Contractor's fill rate.

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, March 19, 2020. On March 19, 2020, the Weekly US ON-Highway Diesel Fuel Price for Central Atlantic region was \$2.99. Therefore, the price per gallon must exceed \$4.49 per 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:
<https://www.eia.gov/petroleum/gasdiesel/>

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. 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 (See Section titled *Opportunity Buys*).

STANDARD PACKAGING

Orders are to be drawn in quantities consistent with the industry standard as well as Executive Order 4 requirements as described in Section titled *Executive Order 4 Approved Specifications for Food Services*, Section titled *Food Service Containers and Wrappers*, and Section titled *Single Use Food Service Utensils*.

EXCEPTION: See Section titled *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.

PRODUCT LEAD TIME

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

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 10 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.

CONTRACT ADMINISTRATION

The Bidder shall provide a sufficient number of Customer Service employees who are knowledgeable and responsive to Authorized User needs and who can effectively service the Contract. Bidder shall also

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

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

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://ogs.ny.gov/procurement/emarketplace>

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/>.

AMERICANS WITH DISABILITIES ACT (ADA)

The federal ADA bars employment discrimination and requires all levels of government to provide necessary and reasonable accommodations to qualified workers with disabilities. Bidder is required to identify and offer any Products it manufactures or adapts that may be used or adapted for use by persons with visual, hearing, or any other physical disabilities. Although it is not mandatory for Bidder to have these Products in order to receive an award, it is necessary to identify any such Products offered that fall into the above Category.

N.Y. STATE FINANCE LAW § 139-L

Pursuant to N.Y. State Finance Law § 139-l, every Bid made on or after January 1, 2019 to the State or any public department or agency thereof, where competitive bidding is required by statute, rule or regulation, for work or services performed or to be performed or goods sold or to be sold, and where otherwise required by such public department or agency, shall contain a certification that the Contractor has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of N.Y. State Labor Law § 201-g.

N.Y. State Labor Law § 201-g provides requirements for such policy and training and directs the Department of Labor, in consultation with the Division of Human Rights, to create and publish a model sexual harassment prevention guidance document, sexual harassment prevention policy and sexual harassment prevention training program that employers may utilize to meet the requirements of N.Y. State Labor Law § 201-g. The model sexual harassment prevention policy, model sexual harassment training materials, and further guidance for employers, can be found online at the following URL: <https://www.ny.gov/combating-sexual-harassment-workplace/employers>.

Pursuant to N.Y. State Finance Law § 139-I, any bid by a corporate Contractor containing the certification required above shall be deemed to have been authorized by the board of directors of such Contractor, and such authorization shall be deemed to include the signing and submission of such Bid and the inclusion therein of such statement as the act and deed of the Contractor.

If the Contractor cannot make the required certification, such Contractor shall so state and shall furnish with the Bid a signed statement that sets forth in detail the reasons that the Contractor cannot make the certification. After review and consideration of such statement, OGS may reject the bid or may decide that there are sufficient reasons to accept the Bid without such certification.

The certification required above can be found on Attachment 2 – *NYS Required Certifications* which Contractor must submit with its Bid.

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* of Solicitation 23199.

REPORTING

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 15 days of the following month starting with the first calendar quarter after Contract inception*. 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.

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

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

Allowance Reports

Additionally, an Allowance Report shall be furnished to OGS every quarter in accordance with Section titled *Audit Reporting*. The report shall include all the above-defined applicable allowances, discounts, and special negotiated pricing agreements for New York State. The report must contain the Product, description stock number of Product, 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.

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 as identified above in Section titled *Price*, and its subsections. OGS reserves the right to contact Contractor's supplier(s) and request prices charged to Contractor for specific items.

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.

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), 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.

ADMINISTRATIVE FEE

In order to assist with the cost of administering and auditing for Contract compliance, the Contractor must return to OGS, 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.

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.

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>

PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"), thereby further integrating such businesses into New York State's economy. OGS recognizes the need to promote the

employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OGS contracts.

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

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

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

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

USE OF RECYCLED OR REMANUFACTURED MATERIALS

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

BULK DELIVERY AND ALTERNATE PACKAGING

New York State encourages the use of innovative packaging that reduces the weight of packaging and the generation of packaging waste. A Contractor is encouraged to use reusable materials and containers and to utilize packaging configurations that take advantage of storage containers designed to be part of the Product for the shipment of multi-unit purchases. New York State recognizes that these packaging methods are in the development stage and may not be currently available. Authorized Users are urged to inquire about these programs at the time of purchase and determine the best solution for their needs.

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.

CONSUMER PRODUCTS CONTAINING MERCURY

Contractor shall comply with the requirements of Title 21 of Article 27 of the NYS Environmental Conservation Law regarding restrictions on the sale, purchasing, labeling and management of any products containing elemental mercury 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 Contractor 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.

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.

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

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

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

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

In order to assist the State in determining the responsibility of the Contractor prior to Contract award, the Contractor must complete and certify (or recertify) the Questionnaire no more than six (6) months prior to the Bid due date. A Contractor's Questionnaire cannot be viewed by OGS until the Contractor has certified the Questionnaire. It is recommended that all Contractors become familiar with all of the requirements of the Questionnaire in advance of the Bid opening to provide sufficient time to complete the Questionnaire.

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

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

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

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

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

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

NYS TAX LAW SECTION 5-A

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

A Contractor is required to file the completed and notarized Form ST-220-CA with the Bid to OGS certifying that the Contractor filed the ST-220-TD with DTF. Only the Form ST-220-CA is required to be filed with OGS. The ST-220-CA can be found at https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf. The ST-220-TD can be found at https://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf. Contractor should complete and return

the certification forms within five (5) business days of request (if the forms are not completed and returned with Bid submission). Failure to make either of these filings may render a Contractor non-responsive and non-responsible. Contractor shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law. The ST-220-TD only needs to be filed once with DTF, unless the information changes for the Contractor, its affiliates, or its Subcontractors.

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

“OGS OR LESS” GUIDELINES

Purchases of the Products included in the Contract and resulting Contract are subject to the “OGS or Less” provisions of State Finance Law § 163(3)(a)(v). This means that State Agencies can purchase Products from sources other than the Contractor provided that such Products are substantially similar in form, function or utility to the Products herein and are (1) lower in price and/or (2) available under terms which are more economically efficient to the State Agency (e.g. delivery terms, warranty terms, etc.).

Agencies are reminded that they must provide the State Contractor an opportunity to match the non-Contract savings at least two business days prior to purchase. In addition, purchases made under “OGS or Less” flexibility must meet all requirements of law including, but not limited to, advertising in the New York State Contract Reporter, prior approval of the Office of the State Comptroller and competitive bidding of requirements exceeding the discretionary threshold. State Agencies should refer to Procurement Council Guidelines for additional information.

NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS

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

Upon request, all eligible non-State agencies must furnish Contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. A list of categories of eligible entities is available on the OGS web site (<https://www.ogs.ny.gov/purchase/snt/othersuse.asp>). Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to NYS Procurement Services Customer Services at 518-474-6717.

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.

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.

RE-WEIGHING PRODUCT

Deliveries are subject to re-weighing at the point of destination by the Authorized User. If shrinkage occurs which exceeds that normally allowable in the trade, the Authorized User shall have the option to require delivery of the difference in quantity or to reduce the payment accordingly. Such option shall be exercised in writing by the Authorized User.

**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 this form & return via email to OGS.sm.SST_food@ogs.ny.gov or mail to:

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