



Office of General Services Procurement Services

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

Solicitation (Revised June 27, 2024)

BID OPENING DATE: July 23, 2024 TIME: 1:30 P.M. ET INVITATION FOR BIDS NUMBER: 23319	TITLE: Group 02450 - Fresh Bread (Statewide) Classification Codes: 50
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CONTRACT PERIOD: Upon OSC approval for a Period of **Three** Years

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

Primary Designated Contacts	
Sara Welsh Contract Management Specialist Telephone No. (518) 473-8102 E-mail address: OGS.sm.SST_food@ogs.ny.gov	Julie Carlson Contract Management Specialist 3 Telephone No. (518) 474-8077 E-mail address: OGS.sm.SST_food@ogs.ny.gov

Bidder's Federal Tax Identification Number: <i>(Do Not Use Social Security Number)</i>	NYS Vendor Identification Number: <i>(See New York State Vendor File Registration Clause)</i>
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Legal Business Name of Company Bidding:

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

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

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

WE ARE NOT BIDDING AT THIS TIME BECAUSE:

FOR PROCUREMENT SERVICES USE ONLY

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

Bidder Certification and Affirmation

Bidder certifies and affirms as follows:

1. This Bid is an irrevocable offer for 90 days from the date of submission to the New York State (“NYS”) Office of General Services (“OGS”), or for such longer period as is set forth in the Invitation for Bids.
2. The Bidder can and will provide and make available, at a minimum, the products, deliverables and/or services as described in the Invitation for Bids.
3. The Bidder has read and understands the provisions of the Invitation for Bids, and all appendices, attachments, and exhibits attached thereto, including Appendix A (Standard Clauses for New York State Contracts) and Appendix B (General Specifications).
4. The information contained in this Bid is complete, true, and accurate.
5. The Bidder understands and agrees to comply with the requirements of the Procurement Lobbying Law, State Finance Law § 139-j and § 139-k, and with OGS’s procedures relating to permissible contacts during a procurement as required by State Finance Law § 139-j(3) and § 139-j(6)(b). Such requirements and procedures are posted at <https://ogs.ny.gov/acpl>.

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

Print Full Bidder Entity Name

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

Print Name of Signatory

Print Title of Signatory

Date

RETURN THIS PAGE AS PART OF BID

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- Appendix B – *General Specifications (April 2016)*
- Appendix C – *Federal Funding Agency Mandatory Terms and Conditions*
- Appendix D – *Contract Modification Procedure*

ATTACHMENTS

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- Attachment 2 – *NYS Required Certifications*
- Attachment 3 – *Encouraging Use of NYS Businesses*
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- Attachment 5 – *Bidder Information Questionnaire*
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- Attachment 9 – *Certification Under Executive Order No. 16*
- Attachment 10 – *Supplier/Manufacturer’s Certificate*
- Attachment 11 – *Contractor/Reseller/Distributor Information Sheet*
- Attachment 12 – *Intent to Bid*
- Attachment 13 – *Proof of Past Sales*
- Attachment 14 – *Price List Update Template*

SECTION 1 INTRODUCTION

1.1 Overview

This Solicitation is issued by the New York State (“NYS”) Office of General Services (“OGS”), Procurement Services for Fresh Baked Bread (Fresh Bread) as specified herein for all Authorized Users eligible to purchase through this Solicitation. OGS is a New York State Agency authorized by law to establish Centralized Contracts for use by NYS Agencies and other Authorized Users, as that term is defined by State Finance Law Section 163(1)(k). The purpose of this Solicitation is to award multiple Contracts for Fresh Bread products to responsive and responsible Bidders that are able to meet the terms and conditions of this Solicitation and the requirements detailed in Section 2 – Bidder Qualifications and Requirements, and whose product offerings meet the scope of this Solicitation, as detailed in Section 1.2 – Scope. The Contract(s) awarded as a result of this Solicitation will be for use by New York State Agencies and other Authorized Users (see Section 5.33 – Non-State Agencies Participation in Centralized Contracts) Statewide. Accordingly, references to the State and its Agencies as Authorized Users under this Solicitation and the ensuing Contract(s) shall encompass all such entities within the definition of “Authorized User” set forth in Appendix B – General Specifications.

Contract awards will be made to all responsive and responsible Bidders who meet qualifications as detailed in Section 2 - Bidder Qualifications and Requirements and whose pricing is determined to be reasonable by OGS. The prices proposed by Bidders in response to this Solicitation are to be based upon discounts from Manufacturer List Prices.

The Contracts resulting from the Solicitation will be multiple-award, statewide, Centralized Contracts. When making purchases from the Contracts resulting from the Solicitation, Authorized Users shall procure products and services that best meet their form, function, and utility requirements. Authorized Users are encouraged to obtain quotes from all eligible Contractors prior to making a purchase. Pursuant to State Finance Law § 163(10)(c), at the time of purchase, Authorized Users shall base their selection among multiple Contracts upon which is the most practical and economical alternative that is in the best interests of the State.

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

1.2 Scope

The State of New York seeks to establish Centralized Backdrop Contracts for the acquisition of fresh baked bread products only, which includes fresh bread and rolls including bread loaves, individual bread slices, hamburger rolls, frankfurter rolls, and dinner rolls, in the following two (2) Lots:

- Lot 1: Bread Products per Package
- Lot 2: Individually Wrapped Bread Products

It is the intent of OGS to award Centralized Backdrop Contracts for fresh baked bread products in the following four (4) Regions in the State, as set forth below in Table #1-Regions:

Table #1: Regions

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

Fresh bread products will be award by specific Lot, Regionally, as follows:

Downstate Region:

- Lot 1: Bread Products per Package
- Lot 2: Individually Wrapped Bread Products

NOTE: Individually Wrapped Bread Products - Each bread slice and roll must be individually wrapped within the box (bread slices) and bag (rolls).

Central, Eastern and Western Regions:

- Lot 1: Bread Products per Package

Bidders may provide a Bid for any or all Regions/Lots in accordance with Section 2, *Bidder Qualifications*. Bidders bidding on the Downstate Region may provide a Bid for one or both Lots.

Exclusions: Dessert products including, but not limited to, cookies, donuts, Danish pastries, cinnamon buns, cakes, and pies are excluded from the scope of this Solicitation and resulting Contract award.

1.3 Estimated Quantities

A Contract resulting from this Solicitation shall be an estimated quantity Contract. No specific quantities are represented or guaranteed, and the State provides no guarantee of individual Authorized User participation. The Contractor must furnish all quantities actually ordered at or below the Contract prices. The anticipated dollar value of the award for this Solicitation, based on historical purchases under previous awards, is approximately \$4,000,000.00 annually. The individual value of each resultant Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered. Authorized Users will be encouraged to purchase from Contractors who offer the products and pricing that best meet their needs in the most practical and economical manner. See Appendix B, Estimated/Specific Quantity Contracts and Participation in Centralized Contracts.

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

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

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

1.4 Key Events/Dates

EVENT	DATE	TIME
Solicitation Release	May 9, 2024	N/A
Deadline for Submission of Intent to Bid	May 24, 2024	5:00 PM ET
Closing Date for Bidder Questions	May 24, 2024	5:00 PM ET
OGS Procurement Services' Responses to Bidder Questions	June 14, 2024 (tentative)	N/A
Bid Opening / Due date for Bids	July 23, 2024	1:30 PM ET
Contract Approval Date / Award Publish Date	Upon OSC Approval	N/A

1.5 Intent to Bid

A Bidder is requested to indicate its intent to bid by completing Attachment 12 – Intent to Bid and sending via an e-mail titled “INTENT TO BID- [BIDDER NAME]” to OGS.sm.SST_food@ogs.ny.gov on or before the date and time indicated in the Key Events/Dates section. The intent to bid is discretionary.

1.6 NYS Contract Reporter

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

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

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

1.7 Bidder Questions

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

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

1.8 NYS Comptroller Approval

In accordance with Section 112 of the State Finance Law, a Contract resulting from this Solicitation shall not be valid, effective or binding upon the State until such Contract has been approved by the Office of the New York State Comptroller (“OSC”). Purchase orders or other procurement transactions issued under such Contract(s) may also be subject to OSC approval.

1.9 Summary of Policy And Prohibitions on Procurement Lobbying

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

1.10 Definitions

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

“Authorized User(s)” As defined in Appendix B.

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

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

“Contract”, “Centralized Contract” or “Backdrop Centralized Contract” as defined in Appendix B.

“Lot” shall mean the description of fresh baked bread products (fresh bread) within a specified category of items.

“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 agricultural products and food items, including all articles of food or drink, that are grown, harvested, produced, or processed in New York State. Processed food items that are composed of raw materials from both inside and outside the State may be deemed New York State Food Products when (i) their predominant value or quantity is derived from food grown, harvested, or produced in New York State and (ii) the processing of such food products takes place in facilities that are located in New York State.

“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; Dr. Martin Luther King, Jr. Day; Washington’s Birthday (observed); Memorial Day; Juneteenth; Independence Day; Labor Day; Columbus Day; Veterans’ Day; Thanksgiving Day; and Christmas Day.

“NYS Vendor ID” is a unique ten-character identifier issued by the NYS Office of the State Comptroller (OSC) when the vendor is registered on the Vendor File System.

“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 a state agencies, political subdivisions and public benefit corporations (including most public authorities).

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

“Region” shall refer to the grouping of counties within New York State listed in Section 1.2, *Scope*.

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

1.11 Appendices and Attachments

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

Appendix A – *Standard Clauses for NYS Contracts (June 2023)*

Appendix B – *General Specifications (April 2016)*

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Appendix C – *Federal Funding Agency Mandatory Terms and Conditions*
 Appendix D – *Contract Modification Procedure*

Attachment 1 – *Pricing*
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 Attachment 12 – *Intent to Bid*
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 Attachment 14 – *Price List Update Template*

1.12 Conflict of Terms

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

1. Appendix A, Standard Clauses for New York State Contracts;
2. Appendix C (Federal Funding Agency Mandatory Terms and Conditions)
3. The Solicitation;
4. Appendix B, General Specifications;
4. All other appendices and attachments to the Solicitation.
6. The Bidder's Bid.

SECTION 2 BIDDER QUALIFICATIONS

2.1 Bidder Qualifications

Bidder is advised that the State's intent in having the requirements listed below is to ensure that only qualified and reliable Contractors perform the work of the resulting Contract. Any Bid not meeting these requirements may be deemed non-responsive and denied further consideration for award. Bidder shall have the burden of demonstrating to the satisfaction of Procurement Services that it can perform the work required. Procurement Services retains the right to request any additional information pertaining to the Bidder's ability, qualifications, financial capacity, financial stability, and procedures used to accomplish all work under the resulting Contract as it deems necessary to ensure safe and satisfactory work. A Bidder shall meet the following qualifications:

- A. Bidder shall be:
 1. A manufacturer of the products bid, **or**
 2. An authorized representative (reseller or distributor) of a manufacturer for the products bid.
- B. Any Authorized Representative submitting a Bid hereby guarantees that:
 1. It is an Authorized Representative of a manufacturer's entire product line, and
 2. The manufacturer has agreed to provide the Bidder with all quantities of products required in fulfillment of its obligations under any resultant contract with the State, and
 3. The Authorized Representative will provide, with its Bid, Attachment 10 – *Supplier/Manufacturer's Certificate* completed by the manufacturer acknowledging this level of support. If such Manufacturer's Certificate is not submitted with the Bid, Bidder must provide within three (3) business days of request by OGS, (via e-mail is acceptable).
- C. A Bidder must have maintained an organization capable of performing the work described in this Solicitation, in continuous operation, for a minimum of three (3) years immediately prior to the Bid Opening date in Section 1.4 - Key Events/Dates. By the Bid Opening date, such organization must have adequate inventories of the products

offered and must be capable of processing and shipping large numbers of orders to various destinations Statewide.

- D. Bidder must have achieved verifiable sales of a minimum of \$600,000 cumulative total over the last three (3) full calendar years (2021, 2022, and 2023) to any State or Local government entity, and/or private entity, within the State of New York (GSA contract, State contract, Local Governmental Entity contract, BOCES contract, Governmental Cooperative contract, sales to private businesses, schools, hospitals, etc.) for fresh bread products included in Section 1.2 - Scope, by the Bid Opening date in Section 1.4 - Key Events/Dates.
1. Proof of past sales shall be provided within Attachment 13 – Proof of Past Sales in the required Excel format, and include the purchasing entity's name, description of product purchased, amount of individual sale, date of purchase, and grand total of all sales combined. Sales made directly by the Manufacturer, authorized resellers and/or distributors, are acceptable. OGS reserves the right to request additional documentation including copies of invoices/purchase orders/contracts, etc.
 2. Bidder should submit such proof of past sales with the Bid. If proof is not submitted with the Bid, Bidder must provide within three (3) business days, or other such timeframe as requested by OGS, (via e-mail is acceptable).
- E. Bidder shall provide proof of a recent New York State Department of Agriculture and Markets inspection report (less than 12 months prior to the Bid Opening date) demonstrating satisfactory compliance, or acceptable equivalent, as determined by OGS, for all manufacturers supplying product. Additionally, upon OGS request, Bidder shall provide evidence that all manufacturers supplying products bid have verifiable Hazard Analysis & Critical Control Points (HACCP) programs in place at their manufacturing facilities.

SECTION 3 PRODUCT AND DELIVERY REQUIREMENTS

3.1 Product Requirements

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

3.2 Freshness Codes

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

3.3 Trans Fats

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

3.4 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.

3.5 Shelf Life

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

3.6 FDA Nutrition Facts Label

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

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

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

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

The size used for pro-rating for different types of fresh bread products is as follows:

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

3.7 Dimensions and Weights

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

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

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

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

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

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

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

MAXIMUM WEIGHT of a loaf of bread shall not exceed 1,133 grams.

3.8 Flour

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

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

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

3.9 Quality Control and Safety

1. Contractor shall have a written quality control program readily available for submission to OGS upon request that ensures all products are handled in a manner that complies with all Hazard Analysis & Critical Control Points (HACCP) regulatory requirements as well as NYS Circular 933 Good Manufacturing Practices (GMP) a copy of which is available at: <http://www.agriculture.ny.gov/FS/industry/04circs/goodmanufpracticesCIR933.htm>, and Sanitation Standard Operating Procedures (SSOP) which can be found here: http://www.fsis.usda.gov/PDF/SSOP_module.pdf
2. Contractor shall verify, upon OGS request, that all manufacturers supplying product have verifiable HACCP programs in place at their manufacturing facilities.
3. Contractor shall provide at any time during the Contract Term, upon OGS request, a recent (less than 12 months) New York State Department of Agriculture and Markets inspection report demonstrating satisfactory compliance (or acceptable equivalent as determined by OGS).

3.10 Product Delivery

- A. Delivery shall be expressed in number of calendar days required to make delivery after receipt of a Purchase Order (or P-Card order). Product delivery is required within seven (7) calendar days unless otherwise arranged with Authorized User, and guaranteed delivery may be considered in making award. Delivery shall be made in accordance with instructions from the Authorized User included on the Purchase Order. If there is a discrepancy between the Purchase Order and what is listed on the Contract, it is the Contractor's obligation to seek clarification from the Authorized User and, if applicable, from OGS Procurement Services.
- B. Price shall include all customs duties and charges and be net, F.O.B. destination any point in New York State, as designated by the Authorized User, including dock delivery and tailgating of load, which means bringing the truck to the loading dock or loading area and bringing the load to the tailgate of the truck or liftgate for Authorized User personnel to remove the load without entering the truck. In addition, upon agreement, delivery locations may be expanded per the "Extension of Use" clause.
- C. In cases, such as NYS Holidays, where products may have a longer than normal lead time, Contractor shall notify Authorized Users of the additional time needed to fill orders.
- D. Contractor, directly or through its subcontractor, shall be able to deliver all items/products listed herein with evenly spaced deliveries, including weeks with NYS Holidays, to all Authorized Users on a consolidated basis. Delivery shall be made in accordance with instructions on the purchase order from each facility. Deliveries shall be on weekdays during normal business hours except/excluding NYS Holidays.
- E. Some locations may accept Saturday delivery. Correctional facilities will not accept Saturday delivery. For some facilities, delivery may be required to more than one building. It is anticipated that most locations will require delivery to be made at least three alternate days each week (up to five consecutive days in some cases) generally between the hours of 7:00 a.m. and 11:00 a.m. ET.

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

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

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

The Contractor is responsible for all deliveries made under the resultant Contract, including resolving product availability and delivery related issues that may arise during the Contract term, for all participating branches/warehouses/distribution centers, etc. involved in assisting the Contractor with satisfying the requirements under the Award. Delivery, including any sub-contractor/third-party usage, shall be the sole responsibility of the Bidder.

3.11 Restricted Delivery

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

3.12 Smaller Vehicle Use for Delivery

Because there are many delivery sites in residential areas, it is anticipated that local regulations may impose restrictions or prohibit the use of 40,000-pound vehicles. Consequently, the Contractor will be required to use smaller vehicles specifically for those weighing 26,000 pounds or less, for deliveries to these locations. The Contractors must adhere to all local area regulations regarding vehicle size specifications and requirements.

SECTION 4 BID SUBMISSION

4.1 Performance and Bid Bonds

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

4.2 NYS Vendor File Registration

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

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

If the Bidder is not currently registered in the Vendor File, the Bidder must request assignment of a Vendor ID from OGS. Bidder must complete the OSC Substitute W-9 Form (http://www.osc.state.ny.us/vendors/forms/ac3237s_fe.pdf) and submit the form to OGS in advance of Bid submission. Please send this document to the Designated Contact identified in the Solicitation. In addition, if an

authorized reseller is to be used that does not have a Vendor ID, an OSC Substitute W-9 form should be completed by each authorized reseller and submitted to OGS. OGS will initiate the vendor registration process for all Bidders and authorized resellers. Once the process is initiated, registrants will receive an e-mail identifying their Vendor ID and instructions on how to enroll in the online Vendor Self-Service application.

For more information on the Vendor File please visit the following website: <https://osc.state.ny.us/vendors/>

4.3 Format of Bid Submission

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

Situations susceptible to Disqualification may include:

1. E-mail or facsimile Bid submissions are not acceptable, and
2. Absent Price Pages (Attachment 1 – *Pricing*) are not acceptable.

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

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

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

4.4 Content

A complete Bid consists of submission of the following completed documents:

Required Bid Documents	REQUIRED ELECTRONIC FILE FORMAT	ELECTRONIC COPY (USB) REQUIRED	ORIGINAL (Hard Copy with Ink Signature) REQUIRED
Pages 1 and 2 of the Solicitation	PDF	X	X
Attachment 1 – <i>Pricing</i>	Excel	X	
Attachment 2 – <i>NYS Required Certifications</i>	PDF	X	
Attachment 3 – <i>Encouraging Use of NYS Businesses</i>	PDF	X	
Proof of compliance with Attachment 4 – <i>Insurance Requirements</i>	PDF	X	
Attachment 5 – <i>Bidder Information Questionnaire</i>	Excel	X	
Attachment 6 – <i>Bidder Submission Checklist</i>	Excel	X	
Attachment 9 – <i>Certification Under Executive Order No. 16</i>	PDF	X	
Attachment 10 – <i>Supplier/Manufacturer’s Certificate</i>	PDF	X	

Attachment 11 - Contractor/Reseller/Distributor Information Sheet	Excel	X	
Appendix C – Federal Funding Agency Mandatory Terms and Conditions, with Section 10 completed	PDF	X	
EEO 100, Equal Employment Opportunity Staffing Plan	PDF	X	
Standard Vendor Responsibility Questionnaire – (completed and scanned to PDF) or Certification that Questionnaire has been completed online, or hard copy submittal.	PDF	X	
ST-220-CA, Contractor Certification to Covered Agency	PDF	X	X
Attachment 13- Proof of past sales as specified in accordance with Section 2.1.E, Bidder Qualifications	Excel	X	
Proof of compliance with Section 2.1(E), New York State Department of Agriculture and Markets inspection report	PDF	X	
All Bid Solicitation Updates with signatures (if applicable)	PDF	X	X

All documents must be completed in accordance with the instructions for the individual document, which may include an original signature or an original notarized signature. At this time, OGS cannot accept an eSignature that has been generated by software.

Documents should be submitted as an electronic copy and in the format specified in the list above for each document (e.g., PDF, Excel), following the instructions provided in this Section. Electronic copies of documents must be submitted on two (2) USB flash drives, with each USB flash drive containing a complete set of the submitted documents. When submitting electronic documents, include a printed copy of pages 1 and 2 of the Solicitation with the Bid (see *Bid Envelopes and Packages*, below).

Electronic copies of documents provided in PDF format should be saved as an Adobe Acrobat PDF, AND THEN converted to allow for Optical Character Recognition (OCR) (see <https://www.adobe.com/acrobat/how-to/ocr-software-convert-pdf-to-text.html>).

Bidders are strongly encouraged to submit a fully completed bid package to avoid disqualification. Failure to provide all required and satisfactorily completed documentation in a timely manner upon request by OGS may result in that Bidders Bid being found non-responsive and disqualified with no further consideration for contract award. Bidders are encouraged to seek clarification from OGS, if necessary, prior to submitting the requested document(s) and/or revisions.

Bidder is responsible for retaining the original documents with original signatures that have been scanned and submitted electronically until a determination of award is made. If an award is made to Bidder, the documents with original signatures shall be retained by the Bidder for a period of six (6) years after the term of the contract has ended. Bidder shall submit such documents with original signatures to OGS upon request.

In the case of discrepancies between paper copies (if applicable) and USB flash drive submissions of the documents submitted by the Bidder, the electronic USB flash drive copy shall take precedence over the paper copy.

4.5 Bid Envelopes and Packages

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

1. BID ENCLOSED (preferably bold, large print, all capital letters)
2. Solicitation Number #23319
3. Bid Opening Date and Time (as per Section 1.4 – Key Events/Dates)
4. The number of boxes or packages (e.g., 1 of 2; 2 of 2)

All Bids should also include a PRINTED copy of pages 1 and 2 of the Solicitation, completed with the Bidder's information and original signature. The printed copy of pages 1 and 2 should be placed in the envelope with the USB flash drives.

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

4.6 Bid Delivery

Bids shall be delivered to the following address on or before 1:30 p.m. ET, on or before the Bid opening date as stated in Section 1.4 *Key Events/Dates*:

State of New York Executive Department
Office of General Services
Procurement Services
Corning Tower - 38th Floor Reception Desk
Empire State Plaza
Albany, NY 12242
Attn: Bid Enclosed – Solicitation 23319

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

4.7 Important Building Access Procedures

To access the Corning Tower, all visitors must check in by presenting photo identification at the Corning Tower Information Desk. Delays may occur due to a high volume of visitors. Visitors conducting Procurement Services business are encouraged to pre-register for building access by contacting the Procurement Services Receptionist at (518) 474-6262 or Customer Services (518) 474-6717 at least 24 hours prior to the visit. If no answer, leave a detailed phone message including the following information: reason for visit and/or delivering a bid, solicitation number, date and estimated time of delivery or visit, first and last name of visitor, and visitor's cell phone number. Visitor may email customer.services@ogs.ny.gov providing the same information. Visitors who are not pre-registered will be directed to a designated phone at the Corning Tower Information Desk, where they are to call the Procurement Services Receptionist (518) 474-6262 or Customer Services (518) 474-6717 for access. The visitor will be registered at that time. Bids are not allowed to be left at the Corning Tower Information Desk. Please note that delays may occur. Building access procedures may change or be modified at any time.

4.8 NYS Required Certifications

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

4.9 Bid Deviations

Bids must conform to the terms set forth in the Solicitation. As set forth in Bidder Questions, if Bidder intends to submit a Bid that deviates from the requirements of the Solicitation in any way, the proposed deviations should be submitted during the Questions period so that they may be given due consideration prior to the submission of Bids.

Material deviations (including additional, inconsistent, conflicting, or alternative terms) submitted with the Bid may render the Bid non-responsive and may result in rejection of the Bid.

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

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

4.10 Bid Opening Results

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

The Bid Opening Results Page is available at: <https://ogs.ny.gov/procurement/bid-opening-results-0>

4.11 Bid Liability

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

4.12 Firm Offer

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

4.13 NYS Reserved Rights

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

- A. Reject any or all Bids received in response to the Solicitation;
- B. Withdraw the Solicitation at any time at the sole discretion of the State;
- C. Make an award under the Solicitation in whole or in part;
- D. Disqualify any Bidder whose conduct and/or Bid fails to conform to the requirements of the Solicitation;
- E. Seek clarifications and revisions of the Bid;
- F. Amend the Solicitation prior to the Bid opening to correct errors or oversights, or to supply additional information as it becomes available;
- G. Direct Bidders, prior to the Bid opening, to submit Bid modifications addressing subsequent Solicitation amendments;
- H. Change any of the schedule dates with notification through the NYS Contract Reporter;
- I. Eliminate any mandatory, non-material requirements that cannot be complied with by all of the prospective Bidders;
- J. Waive any requirements that are not material;
- K. Utilize any and all ideas submitted in the Bids received;
- L. Adopt all or any part of a Bidder's Bid in selecting the optimum configuration;
- M. Negotiate with a Bidder within the Solicitation requirements to serve the best interests of the State. This includes requesting clarifications of any or all Bids;
- N. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Bidder's Bid and/or to determine a Bidder's compliance with the requirements of the Solicitation;
- O. Select and award the Contract to other than the selected Bidder in the event of unsuccessful negotiations or in other specified circumstances as detailed in the Solicitation;
- P. Accept and consider for Contract Award Bids with non-material Bid Deviations or non-material Bid defects such as errors, technicalities, irregularities, or omissions;
- Q. Use any information which OGS obtains or receives from any source and determines relevant, in OGS's sole discretion, for the purposes of bid evaluation and Contractor selection;

- R. Consider a proper alternative where an evidently incorrect reference/parameter/component/product/model/code number is stated by the State or the Bidder;
- S. Reject an obviously unbalanced Bid as determined by the State; and
- T. Conduct Contract negotiations with the next responsible Bidder, should the Agency be unsuccessful in negotiating with the selected Bidder;
- U. Make no award for any product, region, or lot, as applicable, for reasons including, but not limited to, unbalanced, unrealistic or excessive Bidder pricing, a change in Authorized User requirements and/or products, or an error in the Solicitation (e.g., use of incorrect reference, pack size, description, etc.). In such case, evaluation and ranking of Bids may be made on the remaining products, regions, or lots.
- V. Offer a Bidder the opportunity to provide supplemental information or clarify its Bid, including the opportunity to explain or justify the balance, realism, and/or reasonableness of its pricing.
- W. Award Contracts on a rolling or staggered start basis, either in whole or in part. Contracts awarded in this method shall be coterminous with the first Contract awarded as a result of this Solicitation.

4.14 Incorporation

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

SECTION 5 METHOD OF AWARD

5.1 Method of Award

Awards shall be made to all responsive and responsible Bidders that are able to meet the terms and conditions of this Solicitation and the requirements detailed in Section 2 - Bidder Qualifications, and whose product offerings meet the Scope of this Solicitation, as detailed in Section 1.2 - Scope and whose prices indicate that those products will be provided at a reasonable price as determined by the NYS OGS. Reasonable prices may be determined by, but not limited to, reviewing prices and/or discounts on any current or previously awarded Government Entity contract and/or pricing/discounts offered by other Bidders for this Solicitation, and/or pricing/discounts offered to any private business entity for the same or similar products bid.

New York State reserves the right to reject any Bidder or product that does not demonstrate reasonable pricing for this Solicitation.

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

5.2 Notification of Award

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

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

5.3 Periodic Recruitment

This Solicitation 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 Lots/Regions 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.

5.4 Procurement Instructions for Authorized Users

- A. The Contracts resulting from this Solicitation will be centralized Contracts issued under a multiple award structure. Before proceeding with a purchase, an Authorized User shall check the list of Preferred Source offerings and must comply with State Finance Law §162, which requires that agencies afford first priority to the commodities or services of Preferred Source suppliers such as the Division of Correctional Industries (Corcraft), the New York State Preferred Source Program for People who are Blind (NYSPSP), and NYS Industries for the Disabled (NYSID), when such commodities or services meet the form, function, and utility of the Authorized User and the price offered by Corcraft does not exceed a reasonable fair market price and the price offered by NYSPSP and NYSID is within 15% of prevailing market prices. If a Preferred Source does not meet an Authorized User's form, function, and utility, or the Preferred Source price is more than fair market price or 15% above prevailing market prices, then the Authorized User may use this Contract.
- B. In the event there is no award for a Region, Authorized Users may utilize a Contract in an adjacent Region; however, at the Contractor's discretion and only upon mutual agreement between the awarded Contractor of the adjacent Region and the Authorized User. Authorized Users utilizing the adjacent Region option, may be required to pay additional delivery charges from the Contractor's location to the agreed upon delivery location. Contractor is required to submit delivery billing with their invoice to substantiate delivery charges.
- C. Authorized Users are strongly encouraged to seek a minimum of three (3) quotes, where possible, as well as to seek better than Contract pricing for all items, especially when purchasing in volume, as Contractors may or may not automatically offer volume discounts. Volume discounts, if offered, will be shown on the Contractors Contact and Supplemental Information page posted on the OGS Website.
- D. When placing orders under this Award, the Authorized User should follow and be familiar with the terms and conditions governing the Contract and are responsible for determining that the product(s) they intend to purchase fit within the scope of the Award. New York State Finance Law ("SFL") §165(4) empowers state agencies purchasing food products to require that some or all of the food products be grown, harvested, produced, or processed in New York State. Bidders/Contractors are required to self-identify products meeting EO 32 requirements within their Price List. Authorized Users are strongly encouraged to confirm the accuracy of the entries by contacting the Contractor directly. New York State agencies are required to report food purchases, whether using NYS Centralized Food Contracts or Agency-Specific Food Contracts where the agency has determined that all or some of the food products to be purchased must be New York State Food Products. See Section 6.28 and Section 6.28.1 for additional information.

Authorized Users have the responsibility to document purchases, and such documentation should include:

1. A statement of need and associated requirements;
2. Proof of obtaining all necessary prior approvals;
3. A summary of the Contract alternatives considered for the purchase; and
4. 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).

Authorized Users will place orders directly to the Contractor or the Contractor's Authorized Reseller (if applicable), as specified by the Contractor, and specify any shipping/delivery requirements.

- E. All orders should clearly note the OGS Contract Name and Award Number, Contract Number, and Contractor Name. A Contractor shall not initiate delivery of products until the order is placed by an Authorized User. Contractor must disclose 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.

SECTION 6 CONTRACT TERMS AND CONDITIONS

6.1 Contract Term and Extensions

The Contract shall be in effect for a term of **three (3)** years. The Contract term shall commence after all necessary approvals and shall become effective upon the date of OSC approval of the final executed documents.

All OGS Centralized Contracts resulting from this Solicitation 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 up to three (3) additional 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 the approval of OSC and 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*. OGS reserves the right to allow a base price increase for all products should the optional extension be exercised, based upon review of market conditions at that time, subject to OGS review and approval, pursuant to Section 6.3 (D) below.

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

6.2 Short term Extension

This section shall apply in addition to any rights set forth in Appendix B, *Contract Term – Extension*, and may be used either before the extension referenced in Appendix B, or after. In the event that OGS determines that a short term extension is in the best interests of the State, (e.g., a replacement Contract has not been issued, or an extended period is needed for Authorized Users to transition to another procurement method), 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 previously 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, unless otherwise noted in the extension notification or agreement, this extension automatically terminates should a replacement Contract be issued in the interim.

6.3 Price

- A. Bidders must submit pricing using Attachment 1 – *Pricing* in accordance with the Instructions tab listed within Attachment 1.
- B. Identifying information for each item regarding NYS Executive Order Number 32 (EO 32) is required. Bidders must identify each product that meets the definition of a New York State Food Product in accordance with the Instructions tab listed within Attachment 1 – *Pricing*.
- C. OGS will review each Bidder's Attachment 1 - Pricing submission for completeness and reserves the right to remove any item(s) where the pricing is not included, and/or where the item(s) and/or product is determined to be out of Scope.
- D. All awarded Contractors' Price Lists must be reviewed and approved by OGS Procurement Services prior to posting on the OGS Contract website. OGS' determination of acceptable Price Lists, including, but not limited to products, pricing and discounts shall be final. All OGS approved Contractor Price Lists will be posted on the OGS Procurement Services website, without exception.

6.4 Price Updates

- A. Updates to a Contractor's OGS price list will occur automatically on a quarterly basis, after the Contract start date. Price list update requests at any other time may not be granted, unless OGS determines that it is within the best interest of the State and/or its Authorized Users.
- B. Prices shall be updated based on the Producer Price Index (PPI) for "Bread & bakery product mfg.", Not Seasonally Adjusted (Series ID: PCU31181) as published by the US Department of Labor, Bureau of Labor Statistics, Washington D. C. 20212.
- C. The first price update is to be calculated by dividing the PPI value from four months prior to the contract start date by the PPI value seven months prior to the contract start date. Resultant figure for the quotient shall be rounded to the third decimal place, then multiplied by original awarded bid prices. The resultant new pricing shall be rounded to the second decimal place.
- D. After the first price update, subsequent price updates are to be calculated as follows: The price update will be based upon the pricing that was in effect three months prior to the new price update period. Quotient multiplier shall be found by dividing PPI value from four months prior to the first month of the applicable price update period, by the PPI value seven months prior to the applicable price update period, and rounded to the third decimal place, then multiplied by the pricing that was effective three months prior to the new price update time period. The resultant new pricing shall be rounded to the second decimal place.

The table below is for illustrative purposes only:

Applicable Quarterly (3 months) Price Update Time Period	Effective date for Adjustment	Base/reference PPI month	Comparing/Adjustment PPI Month	Base Prices
11/1/2024 - 1/31/2025	No Adjustment	N/A	N/A	N/A
2/1/2025 - 4/30/2025	2/1/2025	7/2024	10/2024	Original bid prices
5/1/2025 - 7/31/2025	5/1/2025	10/2024	1/2025	2/1/2025

An example of a price update calculation for an automatic pricing update effective February 1, 2025 follows. (All figures used are for illustrative purposes only.)

Base Price per Loaf (Effective November 2024): \$0.75
 PPI (PCU31181) October 2024: 208.3
 PPI (PCU31181) July 2024: 199.7
 October 2024 divided by July 2024: $208.3 / 199.7 = 1.043$
 Quotient multiplied times Current Price: $1.043 \text{ times } \$0.75 = \0.782
 New price effective February 1, 2025: \$0.78

In this example, all current contract prices are multiplied by 1.043 with the results rounded to the nearest two decimal places.

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

E. Contractors may update their OGS price list to include ~~product price increases and decreases~~, product additions and deletions, and/or product item number and/or description changes, and NYS Executive Order Number 32 Food designation changes at any time during the Contract term. New products will be considered for inclusion provided they are within the Contract scope, are within the same Lots/Regions originally awarded to the Contractor and offered to the State under the same terms and conditions as per the Contract, and at discounts/pricing deemed to be

reasonable and in the best interest of the State. The discount offered on new products requested to be added to the Contractor's price list shall be no lower than the minimum established discount in which the new product corresponds. New product additions are not subject to PPI adjustment until the next price update allowance. Contractors may reduce their pricing any time during the contract term.

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

G. Contractor is required to submit Contract pricelist updates electronically using Attachment 14 – Price List Update Template, unprotected and in Microsoft Excel (2016 or lower version) via e-mail to the OGS Procurement Services contract manager. The pricelist must be dated, complete and accurate, and in the required format. The pricelist shall separately include and identify (e.g., by use of separate worksheets or by using highlighting, italics, bold and/or color fonts):

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

OGS reserves the right to:

- a) Request additional information;
- b) Reject Contract updates;
- c) Remove products from Contracts; and
- d) Remove products from Contract updates.
- e) All Contract pricelist updates shall be accompanied by a cover letter describing the nature and purpose of the update (e.g., update requested to reflect new products and/or EO 32 designation updates, price increases and/or reductions, etc.).
- f) When a pricelist update request is submitted with the required cover letter detailing the reason for the update, Appendix D-Contract Modification Procedure is not required unless the Contractor is also requesting a modification(s) to the Centralized Contract or its Appendices for OGS' consideration.

6.5 Fuel Surcharge

The State shall consider the implementation of a fuel surcharge as a result of a national or worldwide catastrophe that causes the "Weekly US On-Highway Diesel Fuel Price" for the Central Atlantic (New York State) region to exceed 1.5 times the price per gallon at the time of Bid Opening. (The per gallon price on date of bid opening will be set forth in the Contract Award Notification.) For example, if the price at the time of Bid Opening is \$4.00 a gallon; the price per gallon would have to exceed \$6.00 a gallon before NYS would consider implementing a fuel surcharge. Prices shall be tracked using information obtained through the Energy Information Administration, United States Department of Energy's (EIA DOE) web site: <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 Contractor 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).

6.6 Best Pricing Offer

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

6.7 Price Structure

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

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

6.8 Ordering

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

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

6.9 Minimum Order

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

6.10 Purchasing Card Orders

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

6.11 Invoicing and Payment

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

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

- Contractor Name
- Contractor Billing Address
- Contractor Federal ID Number

- NYS Vendor ID Number
- Account Number
- NYS Contract Number
- Name of Authorized User indicated on the Purchase Order
- NYS Agency Unit ID (if applicable)
- Authorized User's Purchase Order Number
- Order Date
- Invoice Date
- Invoice Number
- Invoice Amount
- Product Descriptions
- Unit Price
- Quantity
- Unit of Measure
- Dates of Service (if applicable)

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

6.12 Fill Rate

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

6.13 Out of Stock/Not Available Product

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

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

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

6.15 Products Left on Dock

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

6.16 Recalled Products

The Bidder shall have the ability to track all products delivered. The Bidder shall have a product recall program that provides for immediate notification to all facilities including OGS and Authorized Users' central offices that have received the recalled products. The Bidder is responsible for picking up and replacing all products that are subject to recall and ensuring that all manufacturers and suppliers to the Bidder have the same requirements in place. The

Authorized User shall not be responsible for the pickup and replacement cost of any recalled product. Subsequent credits must be applied, as applicable.

6.17 Pick-Up/Exchange of Bread Racks

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

6.18 Unanticipated Excessive Purchase

The State reserves the right to negotiate lower pricing, or to advertise for Bids, for any unanticipated excessive purchase.

6.19 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 it's Contract Administrator, Emergency Contact, or Customer Service employees change, and provide an interim contact person until the position is filled. Changes shall be submitted electronically via e-mail to the OGS Contract Management Specialist.

6.20 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 supports requisition-to-payment processing and financial management functions.

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

6.21 N.Y. State Finance Law § 139-I

Pursuant to N.Y. State Finance Law § 139-I, 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 bidder 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 bidder containing the certification required above shall be deemed to have been authorized by the board of directors of such bidder, 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 bidder.

If the Bidder cannot make the required certification, such Bidder shall so state and shall furnish with the bid a signed statement that sets forth in detail the reasons that the Bidder 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 Bidder must submit with its bid.

6.22 Insurance

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

6.23 Report of Contract Usage

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

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

The report is to be submitted electronically, via e-mail, in Microsoft Excel to OGS Procurement Services, to the attention of the OGS contract manager 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.

The Contract may be terminated if, on the one-year anniversary date of the Contract Award, and annually thereafter, the reports required to be filed under this Section show that the Contractor has made no sales to any Authorized User under the Contract for the prior year (12 consecutive months). Termination of the Contract under this Section is in addition to Appendix B – *Termination*, and shall take effect upon written notification to the Contractor. The Contract may also be terminated for failure to file the reports required under this Section.

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

I. New York State Law

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

II. General Provisions

- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for MWBEs. Contractor's demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the

nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, State, or local laws.

- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, a finding of non-responsibility, breach of contract, withholding of funds, suspension or termination of the Contract, and/or such other actions or enforcement proceedings as allowed by the Contract and applicable law.

III. Equal Employment Opportunity (EEO)

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000 for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to, the contracting State agency (the “Work”) except where the Work is for the beneficial use of the Contractor.

1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate, or distinct from the Contract; or (ii) employment outside New York State.
2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor's equal employment opportunity policy. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.

B. Form EEO 100 – Staffing Plan

To ensure compliance with this section, the Contractor agrees to submit, or has submitted with the Bid, a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.

C. NYS Contract System Workforce Utilization Reporting Module (Commodities & Services)

1. The Contractor shall complete and shall require each of its subcontractors to complete a Workforce Audit on a quarterly basis throughout the term of this Contract, by the 10th day of April, July, October, and January. 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. Contractor shall coordinate with its subcontractors to ensure that all workers associated with this Contract are properly counted and reported. To prepare the report, Contractor and its subcontractors shall use the NYS Contract System Workforce Audit Module found at the following website: <https://ny.newnycontracts.com>.
2. Separate audits shall be completed by Contractor and all subcontractors utilized on this contract and the Contractor is responsible for ensuring timely submission of the Workforce Audit by their 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 complete the Workforce Audit 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 complete the Workforce Audit 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 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/>. 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>

Vendor must scroll down to the section titled COMMODITY & SERVICE CONTRACTS and use the appropriate forms under this section only.

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

Article 3 of the New York State Veterans' Services Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"), thereby further integrating such businesses into New York State's economy. OGS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OGS contracts.

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

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

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

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

6.26 Use of Recycled or Remanufactured Materials

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

6.27 Environmental Sustainability and NYS Executive Order Number 22

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. 22 (Leading By Example: Directing State Agencies to Adopt a Sustainability and Decarbonization Program), which imposes certain requirements on State Agencies, authorities, and public benefit corporations when procuring products. More information on Executive Order No. 22, including specifications for offerings covered by this Contract, may be found at <https://ogs.ny.gov/greenny/>. State entities subject to Executive Order No. 22 are advised to become familiar with the specifications that have been developed in accordance with the Order, and to incorporate them, as applicable, when making purchases under this Contract.

6.28 Establishing State Agency Food Purchasing Goals for New York State Agricultural Products and NYS Executive Order Number 32

New York State has established State Agency purchasing goals for New York State Food Products and provided greater discretion to school districts to purchase New York agricultural products to strengthen local economies and contribute to a more resilient and equitable food system statewide. Executive Order No. 32 (EO 32) requires State Agencies to specify the purchase of New York State Food Products whenever feasible, and attempt to increase purchasing as follows: (i) on or before the end of 2023, 5 percent of such State Agency's food or food product purchase shall be New York State Food Products; (ii) on or before the end of 2024, 15 percent of such State Agency's food or food product purchase shall be New York State Food Products; (iii) on or before the end of 2025, 20 percent of such State Agency's food or food product purchase shall be New York State Food Products; (iv) on or before the end of 2026, 25 percent of such State Agency's food or food product purchase shall be New York State Food Products; (v) on or before the end of 2027, 30 percent of such State Agency's food or food product purchase shall be New York State Food Products.

Contractor(s) shall note the New York State Food Products available on their pricelist. OGS reserves the right to require Bidders/Contractors provide supporting documentation to demonstrate how their product(s) meet the definition of a New York State Food Product including, but not limited to, the sourcing of the ingredients and the percentage the predominant ingredients are grown, harvested, or produced in New York State. OGS reserves the right to make the final determination and their decision shall be binding.

6.28.1 Definitions of NYS Food Products in accordance with the Annual Report of NYS Food Purchases.

NYS FOOD: An unprocessed food item that is composed of 100% raw materials that were grown, harvested, or Produced in New York State.

NYS PROCESSED FOOD: A processed food item that is composed of over 51% (by weight or volume) of raw materials that were grown, harvested, or Produced in New York State, and the Processing of such food products took place in a facility that is located in New York State.

PACKAGING: Preparation of a food item for transportation, distribution, storage, retailing, handling and end-use (e.g., wrapping, bottling, and bagging).

PROCESSING: Any alteration of a food item 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, cooking, and pasteurizing. Packaging a food item is not considered Processing.

PRODUCED: Make or manufacture a food item from components or raw materials that were grown upon and/or harvested from the farm or waters through agricultural, horticultural, aquacultural, or dairying processes.

6.29 Diesel Emission Reduction Act

Pursuant to N.Y. Environmental Conservation Law § 19-0323 (the “Law”), it is a requirement that heavy duty diesel vehicles in excess of 8,500 pounds use the best available retrofit technology (“BART”) and ultra-low sulfur diesel fuel (“ULSD”). The requirement of the Law applies to all vehicles owned, operated by or on behalf of, or leased by State Agencies and State or regional public authorities. It also requires that such vehicles owned, operated by or on behalf of, or leased by State Agencies and State or regional public authorities with more than half of its governing body appointed by the Governor utilize BART.

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

6.30 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment

In accordance with Section 889 of the National Defense Authorization Act (NDAA) for fiscal year 2019, under any Contract or subcontract resulting from this Solicitation, Bidder or resultant Contractor or Subcontractor shall not provide to the State or Authorized User any equipment, system, or service that uses covered telecommunications equipment or services, as defined by the NDAA, as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception applies or the covered telecommunications equipment or services are covered by a waiver, as set forth in the NDAA and the rules and regulations promulgated thereunder.

6.31 Overlapping Contract Products

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

6.32 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.

6.33 NYS Vendor Responsibility

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

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

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/contactbus.htm>. Bidders opting to complete and submit the paper questionnaire can access this form and associated definitions via the OSC website at http://www.osc.state.ny.us/vendrep/forms_vendor.htm.

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

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

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

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

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

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

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

6.34 NYS Tax Law Section 5-a

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

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

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

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

6.35 “OGS or Less” Guidelines

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

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

6.36 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://online.ogs.ny.gov/purchase/snt/othersuse.asp>). Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to NYS Procurement Services Customer Services at 518-474-6717.

6.37 Extension of Use

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

approved by the OGS Contract Manager prior to the use of any Contract. Requestors will be provided with instructions and the proper form(s) to be completed for review and approval by OGS.

6.38 Resellers

A. Definitions

“Reseller” shall refer to alternate distribution sources (distributors or dealers) for a manufacturer that are authorized and designated by said manufacturer, subject to approval by New York State.

B. Conditions of Reseller Participation

Resellers must be approved in advance by the State as a condition of eligibility under the Contract. The State also reserves the right to rescind any such participation or request that Contractor name additional Resellers, in the best interests of the State, at the State’s sole discretion, at any time. Contractor shall have the right to qualify Resellers and their participation under this Contract by product line, contracting program (e.g., government/educational sales), geographic region, size/sales volume, technical training or other criteria (“qualifying criteria”), provided that:

1. such qualifying criteria are uniformly applied to all potential Resellers based upon Contractor’s established, neutrally applied commercial/governmental program criteria, and not to a particular procurement;
2. all general categories of qualifying criteria must be disclosed by the Contractor to the State, in advance, at the beginning of the Contract term;
3. those qualifying criteria met by the Reseller must be identified in Reseller designations Attachment 11 – *Contractor/Reseller/Distributor Information Sheet* at the time that Reseller approval is requested; and,
4. Immediate advance notice is provided to OGS in the event that a change in Reseller’s status occurs during the Contract term. In addition to notification, if the Contract has goals, Contractors MUST submit to OGS a completed MWBE 100 EVERY TIME they add or remove a reseller that has been certified by NYS as an MWBE.

All Resellers who have been approved in accordance with the foregoing paragraph shall be eligible to quote lower pricing for procurements under this Contract which meet their qualifying criteria. Contractor warrants and represents that it shall not, directly or indirectly, by agreement, communication or any other means, restrict any Reseller’s participation or ability to quote a particular order.

C. Designation of Resellers

When Resellers are submitted for approval, Contractor must provide the State, in advance, with all necessary ordering information, billing addresses and Federal Identification numbers in the format requested in Attachment 11 – *Contractor/Reseller/Distributor Information Sheet*. Contractor shall also specify whether orders must be placed directly with Contractor, or may be placed directly with designated Resellers.

D. Responsibility for Reporting/Performance

Contractor shall be fully liable for a Reseller’s performance and compliance with all Contract terms and conditions. Product purchased through a Reseller must be reported by Contractor in the required quarterly sales reports to the State as a condition of payment. In addition to inclusion of Reseller volume in the Contractor’s sales reporting obligation to the State, at the request of an Authorized User, the Reseller shall provide the Authorized User with reports of the individual Authorized User’s Contract activity with the Reseller.

E. Applicability of Contract Terms

Product ordered directly through Resellers shall be limited to products previously approved for inclusion under this Contract and shall be subject to all terms and conditions of this Contract as a condition of Reseller participation.

6.39 New Accounts

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

6.40 Centralized Contract Modifications

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

6.41 Drug and Alcohol Use Prohibited

For reasons of safety and public policy, in any Contract resulting from this Solicitation, the Contractor's personnel shall not be impaired by alcohol or drugs of any kind in the performance of the Contract.

6.42 Traffic Infractions

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

6.43 Contract Documents; Electronic Format

OGS encourages Contractor to submit all documents to OGS in an electronic format, including electronic copies of documents with original signatures. Documents requested by OGS should be submitted in the format specified by OGS. Contractor is responsible for retaining the original documents with original signatures that have been scanned and submitted electronically for the term of the contract and any extensions thereof, and for a period of six (6) years after the term of the contract has ended. Contractor shall submit such documents with original signatures to OGS upon request. If Contractor seeks to assign the contract during the term, Contractor shall provide all documents relating to the bid and contract that it has retained to the successor Contractor (assignee) upon OGS consent to the assignment.

END OF DOCUMENT