



# Contract Award Notification

<b>Title</b>	:	<b>Group 01600 – Milk, Fluid (Statewide)</b> <b>Classification Code(s): 50</b>
<b>Award Number</b>	:	<b><u>22773</u></b> (Replaces Award 22230 and 22755)
<b>Contract Period</b>	:	<b>September 21, 2015 – September 20, 2018</b>
<b>Bid Opening Date</b>	:	<b>June 25, 2015</b>
<b>Date of Issue</b>	:	<b>September 21, 2015</b>
<b>Specification Reference:</b>		<b>As Incorporated In The Invitation for Bids</b>
<b>Contractor Information</b>	:	<b>Appears on Page 2 of this Award</b>

## Address Inquiries To:

State Agencies & Vendors	Political Subdivisions & Others
<b>Name</b> : Christine Brady <b>Title</b> : Contract Management Specialist <b>Phone</b> : 518-474-9867 <b>E-mail</b> : christine.brady@ogs.ny.gov	<b>Name</b> : Procurement Services Customer Service <b>Phone</b> : 518-474-6717 <b>E-mail</b> : customer.services@ogs.ny.gov

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

## Description

**NOTICE:** THIS CONTRACT AWARD NOTIFICATION CONTAINS A SUBSET OF INFORMATION FROM THE INVITATION FOR BIDS (IFB). CONTRACTS RESULTING FROM IFB 22773 HAVE BEEN EXECUTED BY CONTRACT AWARD LETTER. THE CONTRACT AWARD LETTER SETS FORTH THE ORDER OF PRECEDENCE FOR THE TERMS AND CONDITIONS OF THE EXECUTED CONTRACTS. COMPLETE CONTRACT DETAILS INCLUDING TERMS AND CONDITIONS CAN BE FOUND IN THE IFB DOCUMENT DATED 06/19/15.

Award Number 22773 includes all Contracts for Fluid Milk resulting from IFB 22773. These Contracts include milk types and container sizes based on requirements filed by Authorized Contract Users. Contractors will supply milk to Authorized Users in NYS Regions 1-15 and 17-18. No contract was awarded for Region 16. A listing of the counties that fall within these Regions has been provided. Milk prices are subject to both monthly and annual adjustment. A Contract Award Update will be posted to announce any such change.

NOTE: See individual contract Regions to determine actual awardees.

<b><u>CONTRACT #</u></b>	<b><u>CONTRACTOR NAME</u></b>	<b><u>FEDERAL ID #</u></b>	<b><u>NYS VENDOR #</u></b>
PC67024 SB	BOICE BROS. DAIRY, INC.	14-1661319	1000006968
PC67025	BYRNE DAIRY, INC.	15-0258780	1000007309
PC67026	CREAM-O-LAND DAIRIES, LLC	22-3629742	1100070111
PC67027	UPSTATE NIAGARA COOPERATIVE, INC.	16-0845625	1000014941

For complete Contractor contact information, Contract Terms and Conditions, and Base Prices by Region for this award, please see the Contractor Information pages located on the OGS website at:  
<http://www.ogs.ny.gov/purchase/spg/awards/0160022773Can.htm>

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

AGENCIES SHOULD NOTIFY OGS PROCUREMENT SERVICES PROMPTLY IF THE CONTRACTOR FAILS TO MEET DELIVERY OR OTHER TERMS OF THIS CONTRACT. PRODUCTS OR SERVICES, WHICH DO NOT COMPLY WITH THE SPECIFICATIONS OR ARE OTHERWISE UNSATISFACTORY TO THE PURCHASER, SHOULD ALSO BE REPORTED TO PROCUREMENT SERVICES. PLEASE SUBMIT CONTRACT PERFORMANCE REPORTS TO: PS\_SW\_Dairy@ogs.ny.gov.

**SMALL, MINORITY AND WOMEN-OWNED BUSINESSES**

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

**RECYCLED, REMANUFACTURED AND ENERGY EFFICIENT PRODUCTS**

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

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

**NOTE TO AUTHORIZED USERS**

When placing orders under these contract(s), the Authorized User should be familiar with, and follow the terms and conditions governing its use. The Authorized User is accountable and responsible for compliance with the requirements of public procurement processes. The Authorized User must periodically sample the results of its procurements to determine its compliance. In sampling its procurements, an Authorized User should test for reasonableness of results to ensure that such results can withstand public scrutiny.

When using OGS contracts the Authorized User should hold the contractor accountable for contract compliance and meeting the contract terms, conditions, specifications, and other requirements. Market prices fluctuate over time; therefore, Authorized Users are encouraged to seek improved pricing whenever possible.

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

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

**DISPUTE RESOLUTION POLICY:**

Appendix B § 64, *Disputes*, is hereby deleted and replaced with the following:

It is the policy of the Office of General Services' Procurement Services to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to Procurement Services bid solicitations or contract awards. Procurement Services encourages vendors to seek resolution of disputes through consultation with Procurement Services staff. All such matters will be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of Procurement Services' Dispute Resolution Procedures for Vendors may be obtained by contacting the person shown on the front of this Award or through the OGS Procurement Services website at:

<http://nyspro.ogs.ny.gov/sites/default/files/uploaded/Dispute%20Policy%209-2014.pdf>.

**ORDER OF PRECEDENCE**

The list of documents below address clarifications agreed to by the Contractor and the Office of General Services (OGS) and resolved by the parties and set forth herein in an order of precedence for the Contract award. The documents listed below were included in Invitation for Bids (IFB) #22773 or provided by the Contractor. Unless otherwise set forth in the procurement or contract documents, conflicts among documents shall be resolved in the following order of precedence:

- 1) Appendix A Standard Clauses for NYS Contracts (January 2014)
- 2) Contract Award Letter
- 3) Revisions and Clarifications to Bid Specifications
  - i) Addendum #3 - Dated June 19, 2015
  - ii) Addendum #2 - Dated June 5, 2015
  - iii) Addendum #1 - Dated May 29, 2015
- 4) Invitation for Bids #22773 including all Appendices and Attachments referenced therein
- 5) Appendix B General Specifications (June 2014)
- 6) Bidder's Bid

**DEFINITIONS**

The terms used in the Award will be defined in accordance with Appendix B (General, Definitions). In addition, the following definitions shall apply.

**“Base Price”** The price per quart adjusted annually.

**“Class I / Grade A Milk”** shall be all skim milk and butterfat: (1) Utilized and disposed of as a Fluid Milk in packaged form; (2) Moved to a plant as a Fluid Milk in bulk form where it is utilized or allocated as Class I /Grade A milk, which in the case of movements to a non-pool plant not regulated by a Federal order shall be a quantity of Fluid Milks not less than that distributed as route disposition in the marketing area from such plant; (3)

Contained in inventory of packaged Fluid Milks on hand at the end of the month; (4) In shrinkage assigned pursuant to section 21.32 of this Part; and (5) Not specifically accounted for as Class II, III or IV milk.

**“Milk Delivery Schedule”** Summary of Authorized User requirements for delivery of Fluid Milk, including type, container size, quantity, delivery location, days and times provided for bidding purposes and subject to change.

**“Fluid Milk”** (1) Any Fluid Milks in fluid or frozen form containing less than nine percent butterfat that are in bulk or are packaged, distributed and intended to be used as beverages. Such products include, but are not limited to: milk, fat free milk, low fat milk, light milk, reduced fat milk, milk drinks, and cultured buttermilk, including any such beverage products that are flavored, cultured, modified with added nonfat milk solids, concentrated meaning milk that contains not less than 25.5 percent, and not more than 50 percent total milk solids, or reconstituted. (2) The term "Fluid Milk" shall not include: (i) Plain or sweetened evaporated milk/skim milk, sweetened condensed milk/skim milk, formulas especially prepared for infant feeding or dietary use (meal replacement) that are packaged in hermetically-sealed containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and (ii) The quantity of skim milk in any modified product specified in paragraph (1) of this subdivision that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

**“USDA Federal Standards for Fluid Milk”**

Milks	Milk Fat Minimum	Milk Fat Maximum	Milk Solids Non Fat Minimum	Commercial 1989 Milk Fat
Whole	3.25%	-	8.25%	3.30%
Low fat	.50%	2.0%	8.25%	1.74%
Skim	-	.5%	8.25%	.20%

[http://www.ers.usda.gov/media/935958/ah697\\_002.pdf](http://www.ers.usda.gov/media/935958/ah697_002.pdf)

**“Issuing Office”** shall refer to the Office of General Services.

**“Region”** One or more NYS counties.

**“May”** denotes the permissive in a contract clause or specification. Also see “Shall” and “Must”.

**“Milk Marketing Orders”** Federal milk marketing orders regulate handlers that sell milk or Fluid Milks within an order region by requiring them to pay at least the established minimum price for Grade A milk they purchase from dairy producers.

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

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

**“n/a”** is a common abbreviation for not applicable or not available.

**“New York State (NYS) Food Product”** shall refer to commodities that are Food, including milk and Fluid Milks, grown, produced or harvested in New York State, or processed at a facility located within New York State.

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

**“Northeast Milk Marketing Area” (“NEMMA”)** The USDA defines this area as all the territory within the bounds of the following political subdivisions, including all piers, docks and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions New York Counties, Cities, and Townships. All counties within the State of New York except Allegany, Cattaraugus, Chatauga, Erie, Genessee, Livingston, Monroe, Niagara, Ontario, Orleans, Seneca, Wayne, and Wyoming; the townships of Conquest, Montezuma, Sterling and Victory in Cayuga County; the city of Hornell, and the townships of Avoca, Bath, Bradford, Canisteo, Cohocton, Dansville, Fremont, Pulteney, Hartsville, Hornellsville, Howard, Prattsburg, Urbana, Wayland, Wayne and Wheeler in Steuben County; and the townships of Italy, Middlesex, and Potter in Yates (WNYMMA) which are included in the “Western NY Milk

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Marketing Area (WNYMMA)". Class 1 differentials apply to the location of the processing plant, and not to the delivery point. [http://www.fmmone.com/Order\\_Language/Order\\_Language.pdf](http://www.fmmone.com/Order_Language/Order_Language.pdf).

**"Plant Operator" or "Processor" or "Dealer" or "Distributor"** shall refer to persons or entities authorized by the NYS Department of Agriculture and Markets to sell, re-sell distribute and/or deliver Milk and milk products in NYS.

**"Preferred Source Offering"** shall refer to those commodities or services that have been approved in accordance with 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 commodities and services from designated organizations when the commodities or services meet the "form, function and utility" requirements of the governmental entity. Under State Finance Law §163, purchases of commodities and services from preferred sources are given the highest priority and are exempt from the competitive Bidding requirements. The New York State preferred sources include 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, NYS Industries for the Disabled; and the Office of Mental Health. These requirements apply to a State agency, political subdivision, and public benefit corporation (including most public authorities).

**"Procurement Services"** shall mean a division of the New York State Office of General Services, which is authorized by law to issue centralized, statewide contracts for use by New York agencies, political subdivisions, schools, libraries and others authorized by law to participate in such contracts ("Authorized Users").

**"Should"** denotes the permissive in a contract clause or specification. It refers to items or information that the State has deemed are worthy of obtaining, but are not required or obligatory at the time of bid submission. Also, see "May".

**"The State"** shall mean The People of the State of New York, which shall also mean the New York State Office of General Services.

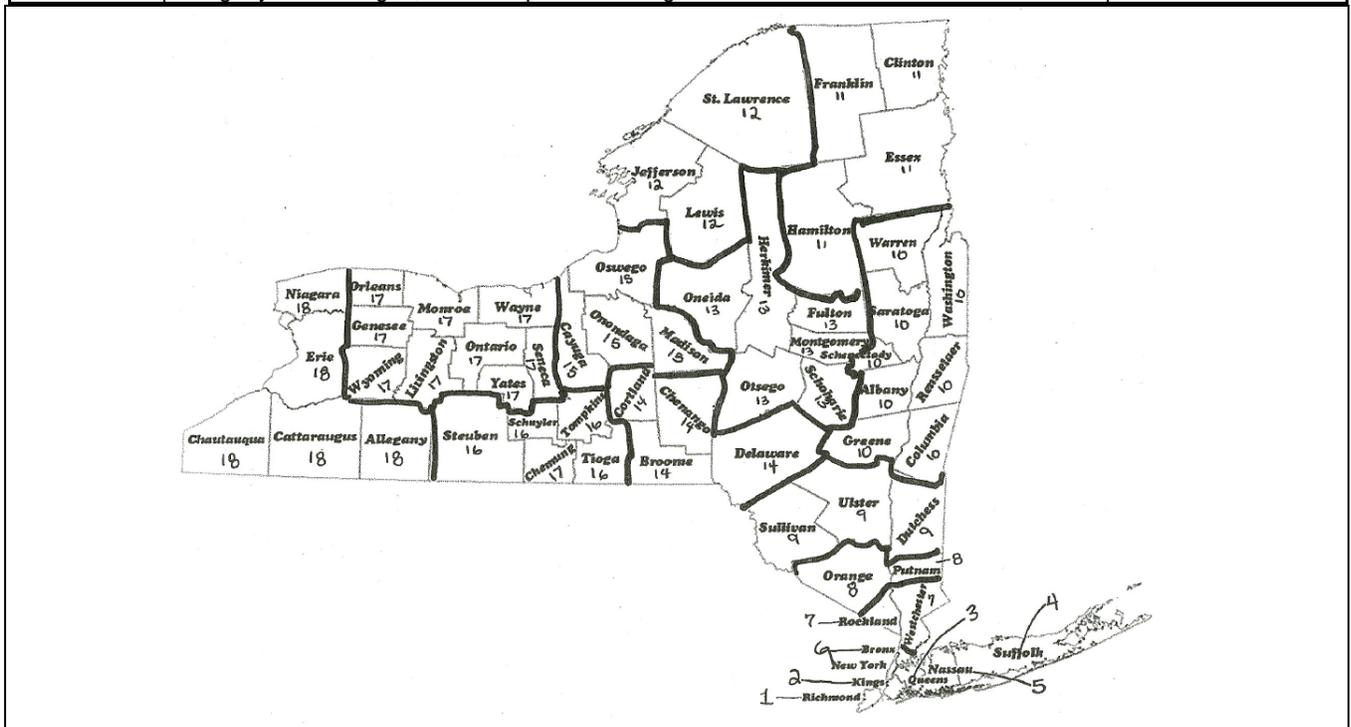
**"Western NY Milk Marketing Area" ("WNYMMA")** The USDA defines this area as the Counties within the State of New York including Allegany, Cattaraugus, Chatauga, Erie, Genessee, Livingston, Monroe, Niagara, Ontario, Orleans, Seneca, Wayne, and Wyoming; the townships of Conquest, Montezuma, Sterling and Victory in Cayuga County; the city of Hornell, and the townships of Avoca, Bath, Bradford, Canisteo, Cohocton, Dansville, Fremont, Pulteney, Hartsville, Hornellsville, Howard, Prattsburg, Urbana, Wayland, Wayne and Wheeler in Steuben County; and the townships of Italy, Middlesex, and Potter in Yates ("WNYMMA") which are included. Counties not listed in this definition are listed in the "Northeast Milk Marketing Area" ("NEMMA"). Class 1 differentials apply to the location of the processing plant, and not to the delivery point. [http://www.fmmone.com/Order\\_Language/Order\\_Language.pdf](http://www.fmmone.com/Order_Language/Order_Language.pdf)

**1. SCOPE**

This Contract Award is to be utilized by State Agencies, non-state Agencies, political sub-divisions and others authorized by law for the purchase and delivery of Class 1 / Grade A Fluid Milk including but not limited to homogenized, low fat and fat-free items.

This Contract has been award by Regions. Each Region is composed of one or more adjacent NYS counties identified in the table and map below. Contractors have been awarded one or more Regions based on the lowest grand total bid per Region. Awarded Contractors are responsible for the provision of Fluid Milk to Authorized Users within the awarded Region. Contract sales may not be transacted outside the awarded Region.

REGION NUMBER	REGION DESCRIPTIONS (COUNTIES)	CONTRACTOR
1	Richmond (Staten Island)	Cream-O-Land
2	Kings (Brooklyn)	
3	Queens	
4	Suffolk	
5	Nassau	
6	Bronx, New York (Manhattan)	
7	Rockland, Westchester	
8	Orange, Putnam	
9	Dutchess, Sullivan, Ulster	Boice Bros. Dairy
10	Albany, Columbia, Greene, Rensselaer, Saratoga, Schenectady, Warren, Washington	Byrne Dairy
11	Clinton, Franklin, Essex, Hamilton	
12	Jefferson, Lewis, St. Lawrence	
13	Fulton, Herkimer, Montgomery, Oneida, Otsego, Schoharie	
14	Broome, Chenango, Cortland, Delaware	
15	Cayuga, Madison, Onondaga, Oswego	NO AWARD
16	Schuyler, Steuben, Tioga, Tompkins	
17	Chemung, Genesee, Livingston, Monroe, Ontario, Orleans, Seneca, Wayne, Wyoming, Yates	
18	Allegany, Cattaraugus, Chautauqua, Erie, Niagara	Upstate Niagara Cooperative



**2. NEW YORK STATE FOOD PRODUCTS**

The Commissioner of General Services recognizes the importance of utilizing food products that are grown, produced, harvested, or processed in New York State. In order to advance this objective, the New York State Office of General Services encourages Contractors to fulfill the requirements of all awarded contracts with products that are grown, produced, harvested or processed, in whole or in part, in New York State, as supported by the Food Metrics Bill, New York State Finance Law §165.4.

**3. FLUID MILK SPECIFICATIONS**

All Fluid Milk must be from sources approved by the New York State Department of Agriculture and Markets. Required licenses and health permits shall be effective at all times during the period of the contract. Cancellation or revocation of license for non-compliance with any order of the Commissioner of Agriculture and Markets shall automatically cancel any resultant contract.

The Contractor guarantees that all Fluid Milk shall not be adulterated or misbranded and complies in all respects with all applicable guidelines and standards defined by the NYS Department of Agriculture and Markets.

No Escherichia coli 0157:H7 (E.coli), or any other pathogens, contaminants, or debris, are permitted in any product.

**4. FRESHNESS CODES**

Packaging shall contain a clearly legible, 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.

**5. PRODUCT INTEGRITY / REFRIGERATION**

Contractors have agreed to preserve product integrity, wholesomeness, safety, and fitness for human consumption, by maintaining proper temperature during storage and transportation through the use of fully functional refrigerated facilities and vehicles specifically designed for safe transportation of refrigerated and frozen foods. Fluid Milk must at all times be stored and transported at a temperature that prevents freezing and does not to exceed 45° Fahrenheit. Ambient trailers shall not be used to ship refrigerated/frozen product.

**6. UNUSABLE PRODUCT**

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

**7. PRODUCT SUBSTITUTIONS**

There should be no substitution of products ordered without the express authorization of the Authorized User. The Authorized User will not be held liable for unauthorized product substitutions. When authorized, substitutions shall be of same or better grade, quality, etc., however, substitutions should not be made on a continuing basis.

**8. BULK MILK PACKAGING**

All containers and filling machines must have the approval of the New York State Department of Agriculture and Markets. Auto taps are required for all types of containers and sufficient caps shall be furnished to allow one for each tilt rack space. Necessary replacements, in order to maintain constant service, are to be furnished by the contractor without charge.

**9. CONTAINERS FOR SECURE FACILITIES**

Correctional Facilities, Mental Health Facilities and some other institutions or facilities, require packaging and containers which do not present security problems (i.e., wire, metal, sharp edges, etc., which may be easily removed and fashioned into a weapon). Consequently, the contractor may be required to modify and/or change packaging and/or containers for delivery to some locations, in order to reduce potential security problems. Unless otherwise noted, Correctional Facilities will not accept wire mesh crates or crates containing metal parts. There shall be no increase in pricing for making adjustments in packaging or containers used because of security requirements.

**10. NUTRITIONAL REQUIREMENTS FOR SCHOOLS**

Federal Law requires schools to provide only Low fat or Fat-free milk to students. Contractors are advised that during the course of the contract resulting from this Award, participating schools may need to adjust their buying

patterns in order to comply with new statutes or guidelines regarding nutritional standards. Such adjustments would primarily affect the classes of milk purchased and not the quantity.

#### **11. ESTIMATED QUANTITIES**

OGS strongly recommends that awarded Contractor(s) contact the Authorized Users identified in the Milk Delivery Schedule (IFB 22773 Attachment 1) to confirm accuracy with the Authorized User prior to acceptance of Purchase Orders.

There is no guaranteed minimum sale to any awarded Contractor. See "Estimated/Specific Quantity Contracts" and "Participation in Centralized Contracts" in Appendix B, OGS General Specifications.

#### **12. CONTRACT PERIOD AND RENEWALS**

Contracts shall be in effect for a term of three (3) years beginning on the date of approval of the first contract awarded. The commencement and termination dates appearing on the Invitation for Bids may be adjusted forward unilaterally by the State for any resulting contract for up to two calendar months, by indicating such change on the Contract Award Notification.

If mutually agreed between OGS and the Contractor, the contract may be renewed under the same terms and conditions for additional periods not to exceed a total contract term of six (6) years.

#### **13. SHORT TERM EXTENSION**

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

#### **14. CANCELLATION FOR CONVENIENCE**

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.

#### **15. PRICE**

Price shall include delivery and unloading by the Contractor to the location and within the time frame stated in the Purchase Order.

Price shall include all customs and duties and be net, per quart, F.O.B. DESTINATION any point in New York State.

Base Prices by Region are found on the Contractor Information pages located on the OGS website at: <http://www.ogs.ny.gov/purchase/snt/awardnotes/0160022773can.htm>

##### **15.1. ANNUAL PRICE ADJUSTMENT (CPI)**

Base contract pricing will remain firm through June 30, 2016. Beginning July 1, 2016, an annual price adjustment will be allowed based on the Consumer Price Index (CPI-U) for all Urban Consumers and be calculated from June 2015.

Price adjustments using the CPI involve changing the base quart price for each type of fluid milk offered by the percent change in the level of the CPI between a "reference" period and a "subsequent" time period. The "reference" period shall be the month in which the bid opening was held and the subsequent time period shall be May of each year. Every price adjustment (up or down) shall be based on comparing the reference period (May 2015) to the following subsequent CPI-U May figure. Each price adjustment shall be effective the following July.

##### **15.2. MONTHLY PRICE ADJUSTMENT (MILK MARKETING ORDER)**

In the event of an increase or decrease in the Class 1 (one) price including butterfat and skim milk prices, pursuant to the provisions of Article 21, as amended by Chapter 383 of the Laws of 1937, of the Agriculture and Markets Law, and/or Federal or State Milk Marketing Agreement or Order, the Office of General Services, Procurement Services, will authorize an adjustment of the prices paid for Fluid Milk delivered under contract to facilities located in the milk marketing area.

In areas not subject to Federal or State Milk Marketing Orders, adjustments shall be computed on the same basis as those under the Northeast Milk Marketing Area.

Monthly Milk Marketing area price adjustments are issued and updated monthly in the form of a Contract Award Notification Update. Monthly price adjustments are posted to the Procurement Services website.

### **15.3. LOWER PRICING**

The State reserves the right to negotiate lower pricing, or to advertise for bids, whichever is in the State's best interest as determined by the Commissioner, in the event of a significant decrease in market price of any product listed. In addition, if the contractor's normal pricing to the public or to the trade in general is less than the net/contract pricing with the application of a contract discount, etc., then the normal pricing to the public or to the trade in general shall also be granted to contract participants.

The State reserves the right to negotiate lower pricing, or to advertise for bids, any unanticipated excessive purchase. An "unanticipated excessive purchase" is defined as an unexpected order for a contract product(s) totaling more than \$50,000.00.

### **15.4. VOLUME DISCOUNTS**

Awarded Contractors may offer volume discounts. Volume discounts may be applied per purchase order, cumulatively per Authorized User, and cumulatively statewide. Contractor(s) shall indicate the basis for applying the volume discount(s). Volume discounts shall be defined and applied as follows: Purchase order volume discounts shall be additional discounts applied to individual purchase orders over a specified dollar amount. Cumulative Authorized User volume discounts shall be additional discounts applied to all future orders made by the Authorized User once an established volume has been met by that Authorized User. Cumulative statewide volume discounts shall be additional discounts applied to all future orders for all Authorized User orders once an established volume has been met under this contract.

### **15.5. DAIRY COMPACT**

In the event a dairy compact covering New York State becomes effective pursuant to State and/or Federal law during the contract period and such compact's mandated price is higher than the price set for Class 1 (one) milk within the State pursuant to a State or Federal order, OGS will authorize price adjustments to reflect such compact pricing.

### **15.6. DEPOSIT CHARGE FOR MILK CASES**

Contractors may assess a deposit charge as established by the New York State Department of Agriculture and Markets for each milk case delivered to the using facility and which upon delivery remains at the premises of the facility. Ownership of each milk case properly identified with the name or other business identification of the person or company who is the owner remains with that owner notwithstanding the imposition of the deposit.

The contractor may hold the deposit so long as the milk case or its replacement remains on the facility premises and until such time as it is returned to the contractor in useful condition allowing for normal wear and use. A reconciliation statement of all deposited funds shall be made within 30 days of contract termination or return of milk cases.

### **15.7. MILK COOLERS / DOLLIES / DISPENSERS / CARTS**

For designated facilities, the contractor is required to provide milk coolers, dollies, dispensers or carts as indicated at no additional cost.

No additional charge for this equipment will be allowed. The dollies, dispensers or carts are to be provided, installed, maintained and replaced (if necessary) by the contractor at the contractor's expense. On conclusion of the contract, the equipment remains the property of the contractor and is to be removed at contractor's expense.

### **15.8. 2.7 ROUNDING DOWN OF PRICES**

Any price which goes beyond the fourth place after the decimal point (e.g., beyond the ten thousands place) shall be rounded downward in the State's favor (i.e., a price of \$3.64528 shall be computed and considered \$3.6452).

**16. DELIVERY**

Deliveries are to be made strictly in accordance with instructions on Purchase Order from each Authorized User, on the day and date and within the time frame specified, in clean properly sealed containers and at a maximum temperature of 45° Fahrenheit on delivery. 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 ordering Authorized User and, if applicable, from the Office of General Services, Procurement Services.

**16.1. DELIVERY CERTIFICATION**

Contractor shall secure a signed receipt from Authorized User certifying to physical delivery of product. In the event deficiencies are later noted and a properly signed receipt is not available, Contractor will be responsible to ship adequate additional product, as soon as possible, to resolve the deficiency. Such certification does not imply acceptance of product. Acceptance shall be made only after the inspection of goods by the Authorized User.

**16.2. PRODUCTS LEFT ON DOCK**

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

**16.3. DELIVERY CONDITIONS**

All Fluid Milk must be delivered in clean well-maintained refrigerated vehicles. Authorized User may choose to reject a delivery because of unsatisfactory service, product, or unsanitary conditions of delivery equipment.

Delivery personnel should be appropriately uniformed and readily identifiable with visible name and company identification. Contractors shall consult with Authorized Users concerning any other security procedures or delivery protocol.

The product delivered must be strictly in accordance with the Region awarded. Contractor shall be responsible to make no shipment of the product that will be exposed to conditions during transit, detrimental to the product. Product must be delivered strictly in accordance with specifications and shall be "Ready for Use."

**16.4. RESTRICTED DELIVERY**

Price includes "restricted" delivery. Delivery hours are to be approved by the Authorized User and must be made only on weekdays (Monday through Friday) except/excluding State holidays. Price shall also include contacting the agency prior to making delivery. Some Correctional and Mental Health Facilities may have delivery restrictions. Delivery to these facilities must be made during certain hours, typically between 8:30 a.m.-10:30 a.m., or between 12:30 p.m.-2:30 p.m. Deliveries are to be made in crates which are acceptable to the facility (wire mesh crates may not be acceptable).

**16.5. SMALLER VEHICLE USE FOR DELIVERY**

Since delivery sites may be located in non-industrial areas, it is anticipated local ordinances may restrict and/or prohibit the use of 40,000-pound (40') vehicles. Consequently, deliveries to these locations are required to be with smaller vehicles - 26,000 pound (20' straight trucks or 24' "pups") or smaller capacity/size vehicles. In such cases, it is not only a requirement to use smaller vehicles, but it also remains the Contractor's responsibility to determine and comply with local ordinances and requirements.

**16.6. MISSED DELIVERIES**

In the event that a Contractor misses a regular scheduled delivery, the contractor shall work cooperatively with the Authorized User to reschedule the delivery at no additional cost to the Authorized User. If resolution cannot be reached within 24 hours, the Authorized User may purchase required quantities from the open market. Any price difference between open market price and contract price will be charged back to the awarded contractor, and applied to the Authorized User account as a credit.

**17. ADDITION OF AUTHORIZED USERS AND SITES**

Contractors with sufficient inventories are encouraged to allow participation by any Authorized User with facilities located within the Contractors awarded Region. Any Authorized User of NYS Contracts, including those not identified on the Milk Delivery Schedule at may be eligible to make purchases and receive deliveries at the awarded Contractor's option.

Authorized Users who wish to participate in these contracts after the award has been issued or which seeks to add additional delivery locations to its order may do so only with the concurrence of the Contractor awarded the Region in which the Authorized User is seeking delivery.

Authorized Users will be required to submit a requirements document and requested delivery schedule to the Contract Manager at the NYS Office of General Services. NYS OGS will review the request for tracking purposes and forward the request to the awarded Contractor for the Region in which the Authorized User is requesting delivery of Fluid Milk.

Contractors may ask Authorized Users to provide additional information, such as documentation of eligibility to use New York State contracts, agency code, name, address and contact person, and information about Fluid Milk needs and delivery schedule requested, in order to determine if the awarded Contractor can meet the Authorized User needs, while meeting all obligations identified in the Awarded Contract.

If the awarded Contractor elects to supply Fluid Milk to the Authorized User, the awarded Contractor must extend the same pricing, terms, and conditions and be agreeable to the Authorized User delivery requirements.

**18. ADDITIONAL PRODUCTS:**

If a specific type of milk and/or the specific type of packaging/size is not listed, and there is a need by an Authorized User, the State reserves the right to add the needed product/size. Pricing in such an event is to be commensurate with other Fluid Milk of a similar type/size.

**19. PRODUCT RETURNS DUE TO PRODUCT QUALITY**

Upon written notification by the Authorized User to the Contractor and the Contract Management Specialist of record, products determined to have quality problems (outdated product, damage, etc.) shall be picked up by the Contractor within one (1) business day after notification with no restocking charge.

Authorized Users shall elect whether to receive a replacement product or a credit/refund for the full purchase price.

**20. PRODUCT RECALL**

The contractor shall immediately notify the OGS Procurement Services of any recalls pertaining to contract items.

**21. EMERGENCY PURCHASING**

In the event that a disaster and/or emergency is declared by Executive Order under Section 28 of Article 2-B of the Executive Law, or that the Commissioner determines pursuant to his/her authority under Section 163(10)(b) of the State Finance Law that an emergency exists requiring the prompt and immediate delivery of products or services, the Commissioner reserves the right to obtain such products or services from any source, including but not limited to this contract, as the Commissioner in his/her sole discretion determines will meet the needs of such emergency. Contractor shall not be entitled to any claim or lost profits for products or services procured from other sources pursuant to this paragraph.

**22. "OGS OR LESS"**

"OGS or LESS" does NOT apply to Milk contracts.

**23. CONTRACT REPORTING REQUIREMENTS**

The Contractor shall submit Attachment 9: REPORT OF CONTRACT PURCHASES including total sales to Authorized Users of this Contract by Contractor and all Authorized Dealers and Distributors, if any, no later than the fifteenth (15th) of the month following the end of each calendar quarter to OGS Procurement Services.

Quarter Name	Contract Quarterly Reporting Period	Contract Report of Contract Purchases Due To OGS
Q1	January 1 - March 31	April 15th of same year.
Q2	April 1 - June 30	July 15th of same year.
Q3	July 1 - September 30	October 15th of same year.
Q4	October 1 - December 31	January 15th of following year.

**24. REPORT OF CONTRACT PURCHASES**

To the best of the awarded Contractors ability, the report must identify products which have been grown, harvested, or produced in NYS, and/or identify products that have been processed at facilities located in NYS.

The report is to be submitted electronically in Microsoft Excel to the OGS contact shown on the front page of the Contract Award Notification and shall reference the Group Number, the Award Number, Contract Number, sales period, and Contractor's (or other authorized agent) name in the document.

**25. AUTHORIZED USER SALES REPORTS**

Upon written request by an Authorized User, the Contractor shall furnish to such Authorized User, on each quarterly basis, a report listing the following: name of Products purchased, quantity purchased, unit price and total dollar volume of purchases.

**26. NEW YORK STATE PROCUREMENT CARD**

For all purchases executed using a New York State Procurement Card, Contractor shall provide an itemized receipt with each delivery.

**27. NEW YORK STATE STATEWIDE FINANCIAL SYSTEM**

The New York State Statewide Financial System (SFS) went live for NYS agencies in April 2012. Future SFS procurement functionality envisions the ability to fully host Contract catalogs or to integrate Contractor-hosted punch-out catalogs. OGS reserves the right to integrate either of these future catalog functions with a Contractor during the contract period. For more information on SFS, its use, and its capabilities please visit the SFS website here: <http://www.sfs.ny.gov/>.

**28. CONTRACT ADVERTISING**

In addition to the requirements set forth in Appendix B, §13 Advertising Results, any Contractor advertisements, promotional literature and/or Contract description(s) of Contract awards must be reviewed and approved by OGS Procurement Services prior to issuance.

**29. OVERLAPPING CONTRACT PRODUCTS**

Products available in the resulting contract may also be available from other New York State contracts. Contract 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.

**30. NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS**

New York State political subdivisions and others authorized by New York State law may participate in contracts. These include, but are not limited to, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See "Participation in Centralized Contracts" in Appendix B, OGS General Specifications. For purchase orders issued by the Port Authority of New

York and New Jersey (or any other authorized entity that may have delivery locations adjacent to New York State), the terms of the "Price" clause shall be modified to include delivery to locations adjacent to New York State.

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

### **31. PROCUREMENT INSTRUCTIONS**

The Authorized User should be familiar with and follow the terms and conditions governing its use. Listed below are separate guidance for "Executive Agencies" and "Non-Executive Agencies". All Authorized Users shall issue purchase order(s) by mail, fax or email, directly to the Contractor listed in the Notice of Contract Award.

Upon Authorized User acceptance of products itemized on the purchase order, Contractor(s) will invoice Authorized User for any portion of products accepted, and accordingly, Authorized User will arrange for payment. Contractor shall provide itemized invoicing for all products in accordance with the contractual requirements.

#### **31.1. FOR EXECUTIVE AGENCIES**

An Executive Agency Authorized User shall first purchase all contract items from the appropriate Preferred Sources as required by State Finance Law §162. If the Preferred Sources do not provide a product that meets the form, function and utility of the Executive Agency Authorized User, it may then purchase products from the Contractor(s).

#### **31.2. FOR NON-EXECUTIVE AGENCIES**

A Non-Executive Agency Authorized User that is subject to the requirements of State Finance Law §162 (4) shall first purchase all contract items from the appropriate Preferred Sources as required by State Finance Law §162. If Preferred Source products do not meet the entity's form, function and utility (as required by State Finance Law §162) then it may purchase products from the Contractor(s).

A non-Executive Agency Authorized User that is not subject to the requirements of State Finance Law §162 (4) may purchase products directly from the Contractor(s).

### **32. ORDERS**

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. Orders submitted during business hours shall be deemed received by Contractor on the date submitted. Authorized Users may submit orders electronically via web-based ordering, e-mail, or facsimile at any time. Orders submitted after business hours shall be deemed received by Contractor on the next business day. Orders submitted by the Authorized User and received by Contractor should contain instructions that include the specific day and date and time frame for the delivery.

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 shall be itemized, and include purchase price, date of purchase, delivery information (if applicable), Authorized User name, and sales representative (if applicable).

### **33. INVOICING**

Invoicing and payment shall be made in accordance with the terms set forth in Appendix B §49 Contract Invoicing.

### **34. BILLING DISCREPANCIES**

Contractor shall resolve all billing, order and invoice discrepancies (e.g., shortages, incorrect item received, etc.) within five (5) business days from notification.

### **35. 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 as of the date of the Bid Opening. On June 1, 2015, the Weekly US On-Highway Diesel Fuel Price for Central Atlantic region was \$3.143. For example, if the price at the time of Bid Opening is \$4.00 a gallon; the price per gallon would have to exceed \$6.00 a gallon before NYS

would consider implementing a fuel surcharge. Prices shall be tracked using information obtained through the Energy Information Administration, United States Department of Energy's (EIA DOE) web site: (<http://tonto.eia.doe.gov/oog/info/gdu/gasdiesel.asp>).

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

For example, if the price of diesel was \$4.00 on the date of bid opening and the current price is \$6.20, 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 approval by OGS.

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

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

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

**POOR PERFORMANCE**

Authorized Users should notify the OGS Contract Manager for this Award or New York State Procurement Services Customer Services promptly if the Contractor fails to meet the requirements of this contract. Performance that does not comply with requirements or is otherwise unsatisfactory to the Authorized User should also be reported to Customer Services.

Please E-mail the OGS Contract Manager for Fluid Milk Award 22773 at [PS\\_SW\\_Dairy@ogs.ny.gov](mailto:PS_SW_Dairy@ogs.ny.gov)

Or, contact Customer Services at:

Office of General Services  
New York State Procurement Services  
Customer Services Coordination  
38th Floor Corning Tower  
Empire State Plaza  
Albany, NY 12242

Tel: 518-474-6717  
Fax: 518-474-2437  
E-mail: [customer.services@ogs.ny.gov](mailto:customer.services@ogs.ny.gov)

**NOTICE:** THIS CONTRACT AWARD NOTIFICATION CONTAINS A SUBSET OF INFORMATION FROM THE INVITATION FOR BIDS (IFB). CONTRACTS RESULTING FROM IFB 22773 HAVE BEEN EXECUTED BY CONTRACT AWARD LETTER. THE CONTRACT AWARD LETTER SETS FORTH THE ORDER OF PRECEDENCE FOR THE TERMS AND CONDITIONS OF THE EXECUTED CONTRACTS. COMPLETE CONTRACT DETAILS INCLUDING TERMS AND CONDITIONS CAN BE FOUND IN THE IFB DOCUMENT DATED 06/19/15.

**State of New York  
Office of General Services  
Procurement Services  
Contract Performance Report**

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

**Contract No.:** \_\_\_\_\_ **Contractor.** \_\_\_\_\_

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

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

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

**CONTRACTOR**

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

Comments: \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_ (over)

Agency: \_\_\_\_\_ Prepared by: \_\_\_\_\_

Address: \_\_\_\_\_ Title: \_\_\_\_\_

\_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_ Phone: \_\_\_\_\_

\_\_\_\_\_ E-mail: \_\_\_\_\_

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

OGS Procurement Services  
 Customer Services, 38th Floor  
 Corning 2<sup>nd</sup> Tower - Empire State Plaza  
 Albany, New York 12242  
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