

State of New York Executive Department  
Office Of General Services  
New York State Procurement  
Corning Tower Building - 38th Floor  
Empire State Plaza  
Albany, New York 12242  
<http://www.ogs.ny.gov>

## CONTRACT AWARD NOTIFICATION

<b>Title</b>	:	<b>Group 02450 - FOOD, HOUSEHOLD ITEMS, SUNDRIES (Statewide)</b> <b>Classification Code(s): 50</b>
<b>Award Number</b>	:	<b><u>02832</u></b> (Replaces Award 3713-G)
<b>Contract Period</b>	:	<b>November 1, 2003 to November 30, 2014</b>
<b>Bid Opening Date</b>	:	<b>March 6, 2003</b>
<b>Date of Issue</b>	:	<b>August 11, 2003 (REVISED April 17, 2014)</b>
<b>Specification Reference</b>	:	<b>As Incorporated In The Invitation For Bids &amp; PM's dated January 15, 2003; January 30, 2003; February 18, 2003; and February 21, 2003</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> : Phyllis Keeler <b>Title</b> : Contract Management Specialist 1 <b>Phone</b> : 518-474-5340 <b>E-mail</b> : Phyllis.keeler@ogs.ny.gov	New York State Procurement Customer Services <b>Phone</b> : 518-474-6717 <b>Fax</b> : 518-474-2437 <b>E-mail</b> : customer.services@ogs.ny.gov

**The New York State Procurement values your input.  
Complete and return "Contract Performance Report" at end of document.**

### Description

This award is to provide State and eligible non-state facilities with Food, Household Items and Sundries. PRICES GUIDES are provided by the contractor.

State agencies have the option of using this award, other State contracts or other purchasing alternatives consistent with their form, function and utility needs and established procedures as stated in "RESERVATIONS" clause.

PR # 02832-T

(continued)

<b><u>CONTRACT #</u></b>	<b><u>CONTRACTOR &amp; ADDRESS</u></b>	<b><u>TELEPHONE #</u></b>	<b><u>FED.IDENT.#</u></b>
PC60353	SYSKO FOOD SERVICES - ALBANY, LLC One Liebich Lane Halfmoon, NY 12065 E-mail: gold.hal@alb.sysco.com	518-877-3228 Hal L. Gold Fax No.: 518-877-3128	FEIN: 743066312 <b>VID: 1000032545</b>

Contractor will not accept the New York State Purchasing Card.

\* Hal L. Gold is Sysco's contract administrator. Questions regarding orders, shipping, product, etc., should be directed to each participating branch/company as follows:

<u>Branch/Company/Address</u>	<u>Federal I.D. #</u>	<u>Contact Person</u>	<u>Phone</u>
Sysco - Albany One Liebich Lane Halfmoon, NY 12065	74-3066312	Mary Lou Sutliff	800-342-9811 x 3209 518-877-3209 Fax: 518-877-3288 E-mail: sutliff.marylou @alb.sysco.com
Sysco - Pittsburgh One Whitney Drive P.O. Box 1000 Harmony, PA 16037	56-2304804	Beth Glenz Mary Ann Calla	800-927-5867 724-452-2100 x292 Fax: 724-452-8023 E-mail: glenz.beth@pit.sysco.com
Sysco - Syracuse 2508 Warners Road Warners, NY 13164	74-3066696	Jennifer Brandt	800-736-6000, ext. 7010 315-672-7000 Fax: 315-672-3035 E-mail: brandt.jennifer@syr.sysco.com

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

**INVOICES MUST BE SENT DIRECTLY TO THE ORDERING AGENCY FOR PAYMENT.**  
**(See "Contract Payments" and "Electronic Payments" in this document.)**

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

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

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

**NOTE TO ALL CONTRACT USERS:**

The terms and conditions of the contract which apply to the award appear at the end of this document. We strongly advise all contract users to familiarize themselves with all terms and conditions before issuing a purchase order.

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PRICE:

“NET NYS DELIVERED PRICING”

All prices include:

FOB destination any point in NYS as designated by ordering agency

- In effect on day of delivery
- Billing and payments in US Dollars
- The "percent upcharge bid" applied to product cost
- Updated price guides furnished to all Authorized Users on a timely basis
- Identical pricing on price guide for each warehouse/distribution center

All prices in relation to deliveries shall be and include:

- Delivery to each of the locations listed in "Locations and Volumes" document (Exhibit 1) as well as to other similar locations that may be added during the contract term
- Consolidated deliveries of all items requested by an ordering facility for all product categories listed herein on the facility's scheduled delivery date
- Palletized or cart/hand truck delivery as required by ordering facility (see separate "Delivery" clause)
- "Restricted" delivery (see "Delivery" clause)
- Use of appropriate vehicles to accommodate site limitations
- Compliance with local ordinances and restrictions

PRICE CHANGES

**Products in Price Guide:** All participating branches/warehouses shall charge the identical price for the approximately 1200 items in the price guide and for a smaller number of items in the DOCS price guide. Changes (increases or decreases) shall be allowed as below:

Dairy and Produce	Weekly
Meat, Poultry and Fish	Weekly
Frozen	Monthly
Ambient, Canned and Dry	Monthly
Dispenser Products and Supplies	Monthly
Non-food	Monthly

**Products not in Price Guide:**

- Price changes allowed as per day of delivery for all other products carried by Contractor not designated in the price guide. Prices established in the price guide shall be based upon the most recent manufacturer, supplier, redistribution center, wholesaler, etc., invoice received by the Contractor plus incoming freight plus upcharge.
- Pricing may differ for each participating branch/warehouse/company.

LOWER PRICING

The State reserves the right to negotiate lower pricing or to advertise for bids, whichever is in the State's best interest.

**ADDITIONAL REDUCTION(s) FOR HIGH VALUE AND/OR DROP SHIP ORDERS:**

\* Delivery By Contractor

Deduction from total for an order when the total order exceeds the amount stated below and order is delivered by contractor:

\$10,000 to \$19,999.99: 1/4% reduction  
\$20,000 or more: 1/2% reduction

\* Delivery By Manufacturer or Processor

Total orders which are delivered to the agency's facility by a manufacture or processor that exceed \$10,000.00 are subject to a substantial price reduction. Agencies should contact OGS for complete details.

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**PURCHASE ORDERS:**

The Contractor will accept electronically transmitted and facsimile orders. The Contractor will accept orders up to 48 hours in advance of the regularly scheduled delivery day.

The Contractor must provide software at no charge, if needed by an Authorized User to use the Contractor's electronic data interchange system.

Purchase orders are effective and binding upon the Contractor when transmitted to the Contractor at the address shown on the award. If a purchase order requires clarification, it is the Contractor's responsibility to resolve it prior to shipment.

**MINIMUM DELIVERY WITHOUT DROP CHARGES:**

Minimum delivery without a "drop" charge, (i.e., a delivery fee, an additional cost added to invoice, etc.), for each (single) destination is \$1,500. The \$1,500 minimum is for aggregate total of all products ordered for a delivery day; products may be on more than one purchase order, products may be on more than one invoice.

There shall be no additional charges, fees, delivery costs, etc., for back orders (product previously ordered and not delivered by Contractor). Contractor may elect to reduce or waive drop charges to individual Authorized Users on a per order basis.

**CHARGES FOR DELIVERIES BELOW \$1,500**

<u>Delivery Amount:</u>	<u>Additional Charge:</u>
\$1,000.00 to \$1,499.99:	\$ 58.00
\$ 500.00 to \$ 999.99:	\$ 80.00
\$ 499.99 or Less:	\$105.00

**CONTRACT PAYMENTS:**

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

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

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

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

**NOTE TO CONTRACTOR:**

This Contract Award Notification is not an order. Do not take any action under this contract except on the basis of purchase order(s) from the agency or agencies.

**NOTE TO AGENCY:**

NYS agencies and/or political subdivisions whose receiving facilities cannot accommodate entrance of an over the road trailer with a height of 13'-6" must specify on their purchase order - example: "Maximum trailer height for delivery to this location is \_\_\_\_\_."(ordering agency should insert height in this space).

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AUDITING:

GENERAL

Audit functions are an integral part of the contract. The State (or the State's designee) shall have the right to verify and audit costs, billings, pricing, agreements, allowances, promotions and discounts. Contractor shall issue refunds, credits for sums due as a result of any overcharges, incorrect billings, incorrect payments, etc. The State reserves the right to expand or diminish audit requirements as it deems proper and necessary to preserve the integrity of the contract. The number of products involved and the frequency of requests may be modified for any contract audits.

CONTRACT AUDITS - CONTRACTOR

There is also the expectation that audits of the contract shall be performed each month by requesting Contractor invoices or billings for approximately ten to forty products. Failure to provide requested information within fourteen calendar days may be the basis to cancel a contract, request a responsibility hearing or initiate other appropriate action.

AUDIT VERIFICATION - SUPPLIER

The State shall also have the right to verify costs, billings, etc. by contacting Contractor's suppliers and shippers. Failure to provide requested information within fourteen days of requests may be the basis to direct the Contractor to use another supplier, request a responsibility hearing or initiate other appropriate action.

ON-SITE AUDIT

The State (or the State's designee) may also conduct on-site verification and auditing. There is the expectation that this may occur at least once a year. It is anticipated the State (or the State's designee) will conduct on-site audits as follows:

- \* Duration to be for one day.
- \* A list of approximately half the items to be audited will be furnished to the Contractor fourteen days prior to the arrival of State personnel.
- \* A list of approximately half the items to be audited will be furnished to the Contractor the day of the on-site audit.
- \* State personnel will review original invoices, bills, vendor agreements, payment documents, etc. when available or copies of original documents. Original documents may be required to be provided at a later date.
- \* Contractor will permit and arrange for copies to be made of material being reviewed. (Note: Such material is understood to be "confidential.")
- \* Any discrepancies will be discussed.
- \* A follow-up meeting may be held with the Contractor to review audit findings.

Periodically the State may compare copies of invoices, etc., submitted for previous months off-site audits with original documents. This may involve approximately ten to forty invoices; half to be identified fourteen days prior to review and the other half to be identified the day of review.

AUDIT SUMMARY FOR OSC

Summaries of monthly and on-site audits may be furnished to the Office of the State Comptroller. They will include a spreadsheet identifying time period, product, stock number, product cost, allowances, subtotal cost, incoming freight, upcharge factor, calculated Net NYS Delivered Price, price on Price Guide, comparison of "calculated" vs. Price Guide. Reasons for differences, monetary amounts involved, and follow-up action to be taken will be stated.

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ADMINISTRATIVE FEE:

In order to assist with the cost of administering and auditing for contract compliance, the Contractor must return to the Office of General Services, New York State Procurement, a fee of 1/4 percent (.0025) of the total sales during each quarter, to be paid no later than 30 days after each quarter. Total sales includes all sales, of all products, to all facilities both State and non-state. Each contract year will run for four consecutive quarters based on the calendar year. Although the contract may not begin exactly at the start of a quarter, total sales will be calculated for the remainder of that quarter. Quarters are defined as January through March, April through June, July through September and October through December. The State may make use of any available contracts for auditing purposes, including but not limited to temporary personnel, audit services, etc.

PURCHASES FROM PRICE GUIDE:

GENERAL

Agencies are to make purchases from the Contractor's PRICE GUIDE.

FURNISHING PRICE GUIDES

At no charge to contract participants, the Contractor must prepare, supply, and keep current for all Authorized Users a weekly and monthly PRICE GUIDE that is to include: Net NYS Delivered Prices; product descriptions; product brand or manufacturer; product stock number; and pack for each product accepted by the State. The identical Price Guides must be sent electronically to Authorized Users and OGS to arrive at least 3 calendar days before the effective date of the PRICE GUIDE. Hard copies of the PRICE GUIDE must be submitted to Authorized Users, upon request. All distributed copies of the Price Guides; hard copies, electronic transmittals and web-based pricing shall be identical. In the event of a discrepancy, it is the subsequent Contractor's obligation to notify OGS and Authorized Users. Prices may be reduced at any time; however, price increases shall not be permitted, unless obviously erroneous.

**For NYS Department of Correctional Services users only the "DOCS" PRICE GUIDE shall be provided.** Failure to submit the proper PRICE GUIDES to all Authorized Users may result in disqualification of Contractor for future contracts and/or cancellation of current contract.

COST LISTS AND PRICE GUIDES

There shall be two PRICE GUIDES; a PRICE GUIDE with approximately 1200 products, and a "DOCS" PRICE GUIDE with only those particular products the NYS Department of Correctional Services designates. The "DOCS" PRICE GUIDE will be a subset of the "main" PRICE GUIDE; fewer products will be listed but not different products.

PRICE GUIDES shall be updated weekly and monthly as noted in the "PRICE" clause (See "PRICE CHANGES" portion). Consequently, there will be separate weekly and monthly portions of the "main" PRICE GUIDE and the "DOCS" PRICE GUIDE. The effective dates of the weekly price guides shall be specified by the Contractor and shall be fixed for a one week period. The monthly prices shall be effective beginning the first day of the month and shall be fixed for the one-month period. Electronic and paper price guides shall be effective on the same date. Pricing shall be effective on the day of delivery.

In addition, Contractor shall provide upon request, to the Office of General Services, an updated COST LIST.

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**DELIVERY:**

**GENERAL**

Contractor shall be able to deliver all items/product categories listed herein at least twice weekly with evenly spaced deliveries including holiday weeks to all Authorized Users on a consolidated basis. Deliveries shall be on weekdays during normal business hours. (NOTE: Some large Authorized Users may require three deliveries a week.) Each delivery location shall be notified by the Contractor at the inception of the contract of its regularly scheduled delivery day(s). Contractor shall work with using agency to establish mutually beneficial dates of delivery, to the extent possible. Contractor shall contact ordering facility prior to making delivery if regularly scheduled delivery date is changed.

**INSIDE DELIVERY**

There is no special charge or surcharge for inside delivery.

**RESTRICTED DELIVERY**

Price includes "restricted" delivery. Delivery to some Authorized Users, particularly Correctional Facilities, have delivery "restricted"; delivery must be made during certain hours, generally between 8:30 a.m. to 10:30 a.m. and 12:30 p.m. to 2:30 p.m., and must be made only on weekdays (Monday through Friday) except/excluding holidays. (NOTE: Other restrictions, including but not limited to, thorough inspection of vehicle & trailer and security clearances, may also apply for deliveries to Authorized Users.)

**OUT OF STOCK/NOT AVAILABLE PRODUCT**

Contractor must have available at least 95% of the items and quantities ordered. Contractor shall notify ordering facility of out of-stock/not available products as soon as practical after receipt of order, but in no event later than the day before delivery.

Suitable substitution shall be made with the consent of the customer in the event of out of stock/not available product situations. Such substitutions shall be of same or better grade, quality, etc. Substitutions shall be priced using the same pricing methodology as on the original product. Substitutions should not be made on a continuing basis. Explanation of repeated/continued substitutions shall be made to the State. [NOTE: Out-of-stock/not available product situations may be a basis for cancellation of contract and/or charging back for open market purchase or any other appropriate remedies.]

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

**REPLACEMENT**

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

**PRODUCT RETURNS**

Products ordered in error must be returned in resalable condition. The Contractor may charge a restocking fee, not to exceed 10 (ten) percent of the total dollar value of the returned product.

**WILL CALL/PICK-UP ORDERS**

Contractor will permit ordering facility to pick-up orders:

Monday - Friday

9:00 A.M. - 4:00 P.M.

All locations

Two hours after receipt of order.

**REFRIGERATION**

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

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DELIVERY: (Cont'd)

PALLETIZATION

Contractor to furnish commodity palletized on either 48" x 40" OR 40" x 32" four way GMA pallets as required by ordering facility. Overall height, commodity plus pallet, shall not exceed 66"; maximum weight not to exceed 3,500 pounds. All shipping units shall have a uniform block and tier. Containers shall be strapped to pallets or shrink-wrapped to prevent movement of the load. Pallet shall be returned or exchanged to Contractor at time of delivery, on subsequent deliveries, or as arranged between the Contractor and the ordering agency.

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

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

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

STRAPPING/SHRINK WRAPPING

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

STANDARD PACK

Orders are to be drawn in quantities reflecting Contractor's standard packaging, as long as Contractor's packaging is the industry standard for normal commercial accounts. EXCEPTION – See "Containers for Correctional Facilities."

CONTAINERS FOR CORRECTIONAL FACILITIES

Correctional Facilities, and possibly some other institutions or Authorized Users, require packaging and containers that do not present security problems (i.e., wire, metal, sharp edges, glass, etc., that may possibly be fashioned into a weapon). 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. There shall be no surcharge in pricing for Contractor's packaging or containers used to meet security requirements. Supplier pricing for products packaged to meet the security requirements shall be the basis of cost as listed on the supplier's invoice.

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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 Retail on-Highway Diesel Prices" for the Central Atlantic (New York State) region to exceed 50% of the price per gallon. The State shall use the following, "Weekly Retail on-Highway Diesel Prices Index." The "Weekly Retail on-Highway Diesel Prices," in cents per gallon, for the Central Atlantic (New York State) region 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 ten (\$.10) cents per gallon that the price exceeds 50% of the cost of the referenced diesel fuel price at the time of bid opening, a delivery surcharge of \$1.00 per invoice will be allowed. For example, if \$1.49 is the price of diesel on date of bid opening and \$2.47 is current price, the difference above 50% of the bid price is \$.23. Therefore, a surcharge of \$2.00 (\$1.00 for every ten cents) may be added. The increase shall be figured in whole increments only. It is the responsibility of the Contractor to notify the Office of General Services, New York State Procurement (OGS/NYSPro) of any request. All fuel surcharges shall take effect after approval by OGS/NYSPro.

Once the "Weekly Retail on-Highway Diesel Prices" for the Central Atlantic (New York State) region drops below 50% of 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 Retail on-Highway Diesel Prices Index," the State shall apply a credit to each invoice as per the above example.

**The "Weekly Retail on-Highway Diesel/Price" in cents per gallon, for the Central Atlantic (New York State) region at the time of the bid opening (March 6, 2003) was \$1.921 per gallon.**

CONTRACT PERIOD AND RENEWALS:

It is the intention of the State to enter into a contract for a term as stated on page one.

However, the State may unilaterally cancel the contract on a monthly basis any time after the initial twelve (12) months by providing written notification at least one (1) month prior to the effective date of cancellation. The minimum term of the contract shall be twelve (12) months. This provision does not affect the State's right of suspension or cancellation contained in the "Suspension of Work" and "Cancellation" clauses in Appendix B, OGS General Specifications.

If mutually agreed between the New York State Procurement and the Contractor, the contract may be renewed under the same terms and conditions for an additional period(s) not to exceed a total contract term of ten (10) years. Upon renewal, the Contractor may request a total of one increase to the percent upcharge for each product category for the combined five-year period. The foundation for any potential increase will be based on the Consumer Price Index (CPI-U) for all Urban Consumers, Not Seasonally Adjusted, U.S. City Average, All Items, as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212. Any increased adjustments shall not exceed a 5.0% increase of the percent upcharge for each product category at the time the original award was issued. Upcharge decreases are permitted at any time. **(Detail on the calculation are as described in the Invitation For Bids document.)**

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.

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**CONTRACT MIGRATION:**

State Agencies or any other authorized user holding individual contracts with Contractors under this centralized contract shall be able to migrate to this contract award with the same Contractor, effective on the contract begin date (retroactively, if applicable). Migration by an agency or any other authorized user to the centralized contract shall not operate to diminish, alter or extinguish any right that the agency or other authorized user otherwise had under the terms and conditions of their original contract.

**RESERVATIONS:**

**RESTRICTIONS ON PURCHASING**

Alcoholic beverages are not to be purchased. In addition, prior approval of OSC must be secured by an ordering NYS agency for non-food items if the non-food item:

- Is not in the PRICE GUIDE; AND
- Unit price exceeds \$1,000 OR
- Aggregate total exceeds \$15,000.

**Also, no product containing any form of alcohol may be shipped to Correctional Facilities.**

**PURCHASING FROM OTHER SOURCES**

Consistent with guidelines issued by the State Procurement Council, State agencies may competitively purchase commodities in accordance with Article 11, Section 163 of the STATE FINANCE LAW, in lieu of using centralized contracts when the resultant price is less than the centralized contract price. Also, when commodities are not available in the form, function and utility required by state agencies through preferred sources or centralized contracts, a state agency may, independently or in conjunction with other state agencies, procure commodities in accordance with the provisions of the STATE FINANCE LAW and guidelines issued by the State Procurement Council.

**CHANGES IN PROGRAM AND/OR FUNDING**

In addition to, and in accordance with, Section 41 of the State Finance Law, the State shall have no liability or obligation to a Contractor, supplier, firm or person, if there should be a change in an agency's or a facility's program, operations, responsibilities, funding, staffing, or appropriation, that results in a change in ordering, a change in requirements, a change in contract, a cancellation of contract, etc. The State's past history of ordering, as well as any "forecasts," may not be indicative of ordering in the future.

**OVERLAPPING CONTRACT ITEMS:**

Products/services available in the resulting contract may also be available from other New York State contracts. Contract users are advised to select the most cost effective procurement alternative that meets their program requirements and to maintain a procurement record documenting the basis for this selection.

If not utilizing a "preferred source," agencies should consider awards (or the updates) for the following:

- **DISPOSABLE DINNERWARE AND CUTLERY (Paper, Foam, Plastic)**

Group: 21103  
Award: 00600  
Contract No.: PC58083  
B/O: 05/15/01  
Expiration: 05/30/04  
Minimum Order: \$150.00

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OVERLAPPING CONTRACT ITEMS: (Cont'd)

- **POLYCARBONATE DINNERWARE (Plates, Bowls, Cups, Tray, Tumblers)**  
Group: 21102  
Award: 00517  
Contract No.: PC57353  
B/O: 11/14/00  
Expiration: 01/31/04  
Minimum Order: \$150.00
  
- **GROCERY AND HOUSEHOLD ITEMS FOR COMMUNITY RESIDENCES AND OTHERS (Downstate)**  
Group: 02400  
Award: C-00694  
Contract No.: PC57250  
B/O: 10/30/00  
Expiration: 12/31/04  
Minimum Order: \$300.00
  
- **GROCERIES (Adirondack, Capital District & Mid-Hudson Area)**  
Group: 02400  
Award: 01190  
Contract Nos.: PC58786 and PC58787  
B/O: 10/16/01  
Expiration: 12/31/05  
Minimum Order: \$300.00
  
- **GROCERIES (Rochester Area)**  
Group: 02400  
Award: 18030  
Contract No.: PC60164  
B/O: 02/06/03  
Expiration: 05/30/08  
Minimum Order: \$300.00
  
- **FACIAL TISSUE**  
Group: 23300  
Award: 02470-RS  
Contract No.: PC59765  
B/O: 08/13/02  
Expiration: 11/30/07  
Minimum Order: One Full Case.
  
- **NAPKINS, PAPER**  
Group: 23300  
Award: 02471-RS  
Contract No.: PC59736  
B/O: 08/15/02  
Expiration: 11/30/07  
Minimum Order: One Full Case.

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OVERLAPPING CONTRACT ITEMS: (Cont'd)

- **TOILET TISSUE - Interfold and Jumbo Rolls**  
Group: 23500  
Award: 02600-RS  
Contract No.: PC59782  
B/O: 09/10/02  
Expiration: 12/31/07  
Minimum Order: One Full Case.
  
- **POLYETHYLENE BAGS (Plastic Trash Liners, Light & Medium Duty)**  
Group: 19901  
Award: 01704-RA  
Contract No.: PC59155  
B/O: 12/11/01  
Expiration: 02/29/04  
Minimum Order: \$300.00

"OGS OR LESS" GUIDELINES APPLY TO THIS CONTRACT:

Purchases of the products included in the Invitation For Bids and related Contract Award Notification are subject to the "OGS or Less" provisions of Section 163.3.a.v., Article XI, of the New York State Finance Law. 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 that are more economically efficient to the State agency (e.g. delivery terms, warranty terms, etc.).

Agencies are reminded that they must provide the State Contractor an opportunity to match the non-contract savings at least two business days prior to purchase. In addition, purchases made under "OGS or Less" flexibility must meet all requirements of law including, but not limited to, advertising in the New York State Contract Reporter, prior approval of the Comptroller's Office and competitive bidding of requirements exceeding the discretionary bid limit. State agencies should refer to Procurement Council Bulletin "OGS or Less Purchases" for complete procedural and reporting requirements.

EMERGENCY PURCHASING:

In the event that a disaster 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.

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**NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS:**

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

Upon request, all eligible non-State agencies must furnish contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. A list of categories of eligible entities is available on the OGS web site ([www.ogs.ny.gov](http://www.ogs.ny.gov)). Click on "For Government-Contracts and Purchasing," then "About Procurement," then "Non-State Agency Legal References." Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to OGS New York State Procurement's Customer Services at 518-474-6717.

**EXTENSION OF USE:**

This contract may be extended to additional States or governmental jurisdictions upon mutual written agreement between New York State (the lead contracting State) and the Contractor. Political subdivisions and other authorized entities within each participating State or governmental jurisdiction may also participate in 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.

**DISPOSITION OF RESTITUTION, DAMAGES, ETC.:**

The Office of General Services has the right to determine the disposition of any settlements, restitution, liquidated damages, etc., that arise from the administration of this contract.

**PREFERRED SOURCE PRODUCTS:**

Section 162 of the State Finance Law requires that agencies afford first priority to the products/services of preferred source suppliers such as Correctional Industries (Corcraft), Industries for the Blind of NYS, and NYS Industries for the Disabled, when such products/services meet the form, function and utility of the agency. Some products/services in this contract may be available from one or more preferred sources. Agencies are reminded to comply with the statutory requirements and resulting guidelines with respect to affording first priority to the preferred sources.

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

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

**CONTRACTOR STOCKING AND FURNISHING PRODUCTS OF PREFERRED SOURCES**

The contractor will be expected to stock and deliver products of preferred sources when:

- Requested by the designated preferred source;
- Delivered pricing to the receiving Authorized Users from the Contractor is no more than delivered pricing from the preferred source; and
- Anticipated volume is expected to be 150 cases or more a year.

Participating agencies may purchase products from preferred sources either directly from the designated preferred source OR from the Contractor. Either purchasing method complies with the "First Priority to Products of Preferred Sources" requirement.

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**CUSTOMER SUPPORT:**

The Contractor will provide the following customer support:

- Toll Free telephone number.
- Telephone customer service representatives to respond to inquiries from Authorized Users during normal business hours, from 9 a.m. to 5 p.m., to assist with routine problems related to ordering, shipment, and billing.
- Field service representative to call on Authorized Users, if needed, to resolve problems. [NOTE: A field service representative is not required to make routine weekly calls to each user merely to take orders].
- Emergency service.
- Acceptance of electronically and facsimile transmitted orders.
- Electronic Access Ordering System.
- Electronic Data Ordering Software at no charge to enable above.

**REPORTS:**

Every three months the Contractor will provide five types of reports as noted below. The first four reports are to be forwarded to the Office of General Services and to the Central Office for the Authorized Users. The fifth report shall be forwarded only to OGS:

- **Aggregate Total**  
Total sales (cumulative to date) for the entire contract (all Authorized Users) by VALUE. Authorized Users only need reports pertaining to their facilities.
- **By Descending Value**  
A descending listing by total value for each item product/delivered.
- **By Item**  
Aggregate (cumulative to date) sales for each item/product listing showing QUANTITY and VALUE.
- **By Location**  
Individual listing of total dollar value for each order/invoice for each authorized user. To include name of facility, address, date of order/invoice, and value of order/invoice.
- **Allowance Report**  
Shall be furnished to the OGS/NYSPro at the beginning of the contract and every three months thereafter. The report shall include all pricing allowances, discounts, and special negotiated pricing agreements for New York State. The report must contain the item, description, stock number of item, the terms of the agreement and the amount of the allowance. Any change to any allowance, discount or special negotiated pricing agreement shall be reported to OGS/NYSPro at the time of the report.

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**DIESEL EMISSION REDUCTION ACT OF 2006 (NEW REQUIREMENT OF LAW):**

On February 12, 2007 the Diesel Emissions Reduction Act took effect as law (the "Law").

Pursuant to new §19 0323 of the N.Y. Environmental Conservation Law ("NYECL") it is now 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. They need to be operated exclusively on ULSD by February 12, 2007. 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.

As a contract vendor the Law may be applicable to vehicles used by contract vendors "on behalf of" State agencies and public authorities. Thirty three percent (33%) of affected vehicles must have BART by December 31, 2008, sixty six percent (66%) by December 31, 2009 and one hundred percent (100%) by December 31, 2010. The Law provides a list of exempted vehicles. Regulations currently being drafted will provide further guidance as to the effects of the Law on contract vendors using heavy duty diesel vehicles on behalf of the State. The Law also permits waivers of ULSD and BART under limited circumstances at the discretion of the Commissioner of Environmental Conservation. The Law will also require reporting from State agencies and from contract vendors in affected contracts.

Therefore, the contract vendor hereby certifies and warrants that all heavy duty vehicles, as defined in NYECL §19 0323, to be used under this contract, will comply with the specifications and provisions of NYECL §19 0323, and any regulations promulgated pursuant thereto, which requires the use of BART and ULSD, unless specifically waived by NYSDEC. Qualification and application for a waiver under this Law will be the responsibility of the contract vendor

**IRAN DIVESTMENT ACT:**

As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a new provision has been added to the State Finance Law (SFL), § 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) will be developing a list (prohibited entities list) of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list is expected to be issued no later than 120 days after the Act's effective date, at which time it will be posted on the OGS website.

By entering into this Contract, Contractor (or any assignee) certifies that once the prohibited entities list is posted on the OGS website, it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list.

Additionally, Contractor agrees that after the list is posted on the OGS website, should it seek to renew the Contract, it will be required to certify at the time the Contract is renewed or assigned that it or its assignee is not included on the prohibited entities list.

During the term of the Contract, should OGS receive information that a person is in violation of the above-referenced certification, OGS will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then OGS shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

OGS reserves the right to reject any request for assignment for an entity that appears on the prohibited entities list prior to the award of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the prohibited entities list after contract award.

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**PRODUCT REQUIREMENTS:**

**GENERAL**

Product shall be the same as that furnished to the general trade; meet or exceed USDA, USDC, State, and industry standards and requirements; have a freshness parameter for Authorized Users to have sufficient time from the date of delivery to consume these foods before quality deteriorates; and conform to State, Federal and industry standards with respect to safety. Conformance to standards and requirements shall include, but not be limited to: weights, measures, fill of containers, drained weights, contamination, or condition on delivery.

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

All products ordered through this contract shall meet the following requirements:

**PATHOGENS**

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

**FROZEN PRODUCT**

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

FRESH FROZEN MEAT (except Ground and Diced Meat) - 90 days.

GROUND & DICED MEATS - 45 days.

CURED & PROCESSED MEAT - 45 days.

**KOSHER AND PASSOVER CERTIFICATION**

Any product designated as "Kosher" shall comply and be labeled with the correct certification designated and shall meet all the requirements of that certification.

Any product designated as "Passover" shall comply with all requirements for Passover and be labeled with the correct certification. Kosher labeling and requirements must be acceptable to the ordering agency.

**GRADES & SPECIFICATIONS**

OGS and/or Authorized Users have the right on demand, to request verification that the specifications and grades for the food ordered are being provided by the Contractor.

**PRODUCT ACCEPTABILITY**

If an Authorized User complains that a product is not acceptable due to poor quality, taste, color, etc., the Contractor shall offer a substitute product at the same or lower price. If the problem cannot be resolved within 72 hours, either the Authorized User or the Contractor can appeal to the Office of General Service whose decision shall be final.

**SAMPLES AND TESTING**

The State has the right to request samples at no charge and test any product purchased by Authorized Users in order to determine whether the item is acceptable and meets specifications and grades.

**DISPENSER PRODUCTS AND SUPPLIES**

Dispensers shall be provided as needed and Authorized Users may require multiple dispensers.

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PRODUCT REQUIREMENTS: (Cont'd)

ADDITION OF PRODUCTS

Subsequent to award, consideration may be given to the addition of products to contract as a part of the Price Guide, if such products are:

- \* Needed by a client agency;
- \* Similar to those already awarded, or are of the same product line, or are included in Contractor's Product Catalog.
- \* Anticipated volume is 10 cases/week for the warehouse/distribution center.

Where the additional products do not meet the minimum requirement of 10 cases per month for each distribution center, products may be added only to the distribution center that meets the minimum, and products are not required to be included in the Price Guide.

Contractor shall not refuse a request from the State to add a product to PRICE GUIDE if the product is readily available from a supplier and meets the conditions listed above.

SPECIAL PROCUREMENT OF PRODUCTS:

Contractor, on an ongoing basis, shall be expected to demonstrate evidence of competition for items of significant value. The State reserves the right to require the Contractor to seek competition for items designated by the State and to require the Contractor to change supplier, negotiate with current supplier or provide additional discounts as necessary to lower costs to the State to be competitive with the market.

The Contractor may negotiate to secure, deliver, etc., products needed by an agency that are not ordinarily a part of the Contractor's standard product line or that represent a special value. If such a purchase is of high volume, to be shipped directly to ordering agency by manufacturer/processor, etc., Contractor may offer a discount. Whenever a special purchase is made, the ordering agency is to document reasonableness of price.

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**State of New York**  
**Office of General Services**  
**NEW YORK STATE PROCUREMENT**  
**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 NEW YORK STATE PROCUREMENT  
 Customer Services, 38<sup>th</sup> Floor  
 Corning 2<sup>nd</sup> Tower - Empire State Plaza  
 Albany, New York 12242  
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