



Guidelines for Purchasing New York State Food Products

Introduction

New York State Finance Law (“SFL”) § 165(4) empowers State agencies purchasing food products to require that some or all of the food products be grown, harvested, produced, or processed in New York State. These guidelines are established jointly by the New York State Office of General Services and the New York State Department of Agriculture and Markets pursuant to 9 NYCRR § 250.2(d) and should be read broadly to encourage both the purchase of New York State Food Products as well as fair and open competition.

Definitions: New York State Food Products

- A “New York State Food Product” is a food item that is grown, harvested, produced, or processed in New York State.
- A processed food item that is composed of raw materials from both inside and outside the State may be deemed a New York State Food Product when (i) its predominant value is derived from food grown, harvested, or produced in New York State and (ii) the processing of such food products takes place in facilities that are located in New York State.
- “Processing” means any alteration of a food product from its raw or original state to enhance its value or render it suitable for consumption. Examples of processing include, but are not limited to, butchering of meat or poultry, and cooking, pasteurizing, and/or packaging food products.

Requiring That Some or All Products Are New York State Food Products

Pursuant to SFL § 165(4), agencies procuring food products may mandate that all or some of the required food products must be New York State Food Products.

In order to do so, an agency must first determine the quantity of food products to be procured. After making such determination, the purchasing agency shall consult the list of New York State Food Products established by the Department of Agriculture and Markets (“DAM”) to determine whether the food products to be procured are available in New York State. The list of New York State Food Products is available at <https://certified.ny.gov/wheretobuy>, where information on New York State Food

Products is provided both in a seasonal calendar format (click on “Harvest Times”) and in a searchable database format (click on “Advanced Search”).

In addition, DAM’s Division of Agricultural Development can provide general information about the capacity of individual growers or suppliers to sell a given commodity. The Division of Agricultural Development can be reached via its home page: <https://www.agriculture.ny.gov/AP/APHome.html>.

For those food products not on the list, the purchasing agency should document such finding in the procurement record.

For food products that are on the list, the purchasing agency shall take the following steps:

1. The purchasing agency shall contact farms, processors, or distributors with an estimate of food products to be purchased, to determine whether those New York State Food Products are available in sufficient quantities to meet the purchasing agency’s need. The purchasing agency may then, at its discretion, include a requirement in its solicitation that some or all of the food must be New York State Food Products. If the purchasing agency elects to do so, it may use the sample language below in its solicitation.
2. If the purchasing agency chooses to require that some—rather than all—food item must be New York State Food Products, then it must specify that percentage in the solicitation. In the event that a procurement is made at a lower percentage than that specified in the solicitation, the purchasing agency shall document the cause for doing so in the procurement record.
3. In the event that the purchasing agency does not receive any bids meeting its requirement for New York State Food Products, the agency may waive the provision that some or all of the food come from New York only if the solicitation expressly states (i) that such provision may be waived, and (ii) that all vendors should bid even if they do not meet the percentage requirements. Sample language is also provided below and should be included in the Contract Reporter ad or any other advertisement or information about the solicitation. If the purchasing agency does not include such language, but subsequently waives the requirement, there is the potential that one or more vendors could file a bid dispute.

Sample Solicitation Language

New York State Food Products

Pursuant to SFL § 165(4), [Agency Name] (the “Agency”) has determined that some or all of the food products to be purchased via this solicitation must be New York State Food Products. A New York State Food Product is a food item grown, harvested, produced, or processed in New York State. A processed food item 2

that is composed of raw materials from both inside and outside the State may be deemed a New York State Food Product when (i) its predominant value is derived from food grown, harvested, or produced in New York State and (ii) the processing of such food products takes place in facilities that are located in New York State.

The list of New York State Food Products consulted to make this determination was issued by the New York State Department of Agriculture and Markets, and is available at <https://certified.ny.gov/wheretobuy>, where information on New York State Food Products is provided both in a seasonal calendar format (click on “Harvest Times”) and in a searchable database format (click on “Advanced Search”).

The food products subject to this provision and the percentage and quantity that must be grown, harvested, produced, or processed in New York State is as follows: [The list below is provided as an example but should of course be modified to meet the agency’s needs.]

1. Apples: 100% New York grown (1,000 bushels per month)
2. Carrots: 50% New York grown (500 pounds per month)
3. Onions: 100% New York grown when purchased April to September; 50% New York grown when purchased October to March (250 pounds per month)
4. Wheat flour: New York grown and processed (200 pounds per month)

For products, percentages, or quantities not listed here, vendors are encouraged, but not required, to provide products that are grown, harvested, produced, or processed in New York.

Note: All vendors of food products that can meet the overall quantities in this Solicitation should provide a bid, regardless of whether the foods are New York State Food Products. An award shall be made based on the lowest total cost to the lowest responsive and responsible vendor that can provide products that are grown, harvested, produced, or processed in New York and that meets the Agency’s requirements as set forth in this section as well as the Agency’s overall needs. If no vendor can provide the required quantities of New York State Food Products, the Agency reserves the right to waive such requirement in whole or in part and to award to the lowest responsive and responsible vendor that meets the Agency’s overall needs. Such waiver may be for all or some of the food products in the scope of this solicitation.

Vendor Certification Requirements

Pursuant to SFL § 165(4)(f)(i), each vendor must certify as part of its bid that it either (a) can provide food products grown, harvested, produced, or processed in New York in such quantities to meet the Agency’s requirements in the solicitation as well as the Agency’s overall needs, or (b) cannot provide food products grown, harvested, produced, or processed in New York in such quantities to meet the Agency’s requirements in the solicitation, but that it can provide food products (from outside New York) in such quantities to meet the Agency’s overall requirements. Sample certification language is provided below.

Sample Vendor Certification Language

[Name of Vendor] (“Vendor”) certifies that it can or cannot provide food products that are grown, harvested, produced, or processed in New York to meet the agency’s requirements as listed below:

1. [Food type 1]: [amount/per period]. [percentage]% grown, harvested, produced, or processed in New York.

___ I certify that Vendor CAN provide sufficient quantity of New York State Food Products to meet the Agency’s requirements.

___ I certify that Vendor CANNOT provide sufficient quantity of New York State Food Products but can provide sufficient quantity of food products to meet the Agency’s overall requirements. If Vendor can provide quantities and percentages of New York State Food Products to partially meet the Agency’s requirements, state such quantities and percentages here:

_____.

2. [Food type 2]: [amount/period]. [percentage]% grown, harvested, produced, or processed in New York.

___ I certify that Vendor CAN provide sufficient quantity of New York State Food Products to meet the Agency’s requirements.

___ I certify that Vendor CANNOT provide sufficient quantity of New York State Food Products but can provide sufficient quantity of food products to meet the Agency’s overall requirements. If Vendor can provide quantities and percentages of New York State Food Products to partially meet the Agency’s requirements, state such quantities and percentages here:

_____.

3. [etc.]

Ongoing Reporting Requirements

Pursuant to SFL § 165(4)(f)(iii), any successful vendor shall be required to consult the list of New York State Food Products produced by the Department of Agriculture and Markets (available at <https://certified.ny.gov/wheretobuy>), to determine whether any such products are being provided to the purchasing agency under the vendor's contracts.

The successful vendor must also provide reports to the purchasing agency. As required by law, the vendor's reports must include the following information for food procured under the vendor's contract or contracts:

1. All of the food products and processed food procured under such contract, categorized by specific type, together with the dollar value of each type, to the extent practicable and known to the vendor.
2. For each type of food product or processed food included on the list of New York State Food Products, the following information, to the extent practicable and known to the vendor:
 - a. The type and dollar value of each type of New York State Food Product procured under the contract;
 - b. The type and dollar value of each type of food product from non-New York sources procured under the contract during the food product's listed New York State availability period; and
 - c. The type and dollar value of each type of food product from non-New York sources procured under the contract.

It is recommended that agencies require vendors to submit such reports on a quarterly basis but no less than once per year.

Purchasing agencies shall provide all such vendor reports to the Office of General Services ("OGS") and Department of Agriculture and Markets ("DAM") as soon as practicable. All food vendor reports received by the purchasing agency must be provided to OGS by the end of the calendar year during which the purchases were made so that OGS can prepare the annual report to the Governor and the Legislature required by SFL § 165(4)(g).

Questions?

Questions regarding these guidelines or the food procurement process in general can be submitted to OGS via email at OGS.sm.SST_food@ogs.ny.gov and to DAM via email at ag.dev@agriculture.ny.gov.



Office of
General Services

Agriculture
and Markets