



**Office of General Services  
Procurement Services**

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

# Solicitation (Revised March 12, 2020)

<b>BID OPENING</b> <b>DATE:</b> 03/19/2020 <b>TIME:</b> 11:00 A.M. EST <b>INVITATION FOR BIDS NUMBER:</b> 23199	<b>TITLE: Group 02450 – FOOD (Commercial and Retail) (Statewide)</b>  <b>Classification Codes: 50</b>
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**CONTRACT PERIOD:** Five (5) years, with the option to renew up to five (5) additional years.

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

Email Address: OGS.sm.SST\_food@ogs.ny.gov

Sarah Crossman Contract Management Specialist Telephone No. (518) 473-9440 E-mail address: OGS.sm.SST_food@ogs.ny.gov	Theresa Kuo Team Leader Telephone No. (518) 474-0259 E-mail address: OGS.sm.SST_food@ogs.ny.gov
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<b>Bidder's Federal Tax Identification Number:</b> <i>(Do Not Use Social Security Number)</i>	<b>NYS Vendor Identification Number:</b> <i>(See New York State Vendor File Registration Clause)</i>
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Legal Business Name of Company Bidding:

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

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

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

WE ARE NOT BIDDING AT THIS TIME BECAUSE:

**FOR PROCUREMENT SERVICES USE ONLY**

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

### Bidder Certification and Affirmation

Bidder certifies and affirms as follows:

1. This Bid is an irrevocable offer for 60 days from the date of submission to the New York State (“NYS”) Office of General Services (“OGS”), or for such longer period as is set forth in the Invitation for Bids.
2. The Bidder can and will provide and make available, at a minimum, the Products, deliverables and/or services as described in the Invitation for Bids.
3. The Bidder has read and understands the provisions of the Solicitation, and all appendices, attachments, and exhibits attached thereto, including Appendix A (Standard Clauses for New York State Contracts) and Appendix B (General Specifications).
4. The information contained in this Bid is complete, true, and accurate.
5. The Bidder understands and agrees to comply with the requirements of the Procurement Lobbying Law, State Finance Law § 139-j and § 139-k, and with OGS’s procedures relating to permissible contacts during a procurement as required by State Finance Law § 139-j(3) and § 139-j(6)(b). Such requirements and procedures are posted at <https://ogs.ny.gov/acpl>.

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

\_\_\_\_\_  
Print Full Bidder Entity Name

By: \_\_\_\_\_  
Signature of Person Authorized to  
Legally Bind the Bidder

\_\_\_\_\_  
Print Name of Signatory

\_\_\_\_\_  
Print Title of Signatory

\_\_\_\_\_  
Date

**RETURN THIS PAGE AS PART OF BID**

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- Appendix A – *Standard Clauses for NYS Contracts* (October 2019)
- Appendix B – *General Specifications* (April 2016)

**ATTACHMENTS**

- Attachment 1 – *Pricing* (Revised 03/12/2020)
- Attachment 2 – *NYS Required Certifications*
- Attachment 3 – *Encouraging Use of NYS Businesses* (Revised 03/05/2020)
- Attachment 4 – *Insurance Requirements*
- Attachment 5 – *Bidder Information Questionnaire*
- Attachment 6 – *Bidder Submission Checklist* (Revised 03/12/2020)
- Attachment 7 – *Bidder Questions Form*
- Attachment 8 – *Report of Contract Usage*

**1 INTRODUCTION**

1.1 Overview

This Solicitation is issued by the New York State (“NYS”) Office of General Services (“OGS”), Procurement Services for Food and Non-Food Products from qualified providers as specified herein for all Authorized Users eligible to purchase through this Solicitation.

The term of the resulting Contract award will be five (5) years with the option to extend up to five (5) additional years. The purpose of this Solicitation is to establish multiple Centralized Contracts, statewide or regional, for Food and Non-Food Products, as described in Section 1.2, *Scope*. Contract awards will be made to all responsive and responsible Bidder(s) who meet minimum qualifications and offer reasonable prices as determined by OGS as discussed in greater detail in Section 5.1, *Method of Award*.

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

1.2 Scope

It is the intent of this Solicitation to establish multiple Contracts for the following three (3) Lots for each Region as described in Section 1.3, *Regions*. Categories of Products within each Lot are listed below:

Lot # and Title	Food and Non-Food Product Categories
1. Commercial (bulk)	a. Ambient, Canned, Dry b. Baked Goods c. Dairy d. Frozen (Includes prepared foods and entrees; frozen eggs, frozen vegetables and fruits, frozen meats, and frozen juices) e. Meat, Poultry & Fish (Fresh, including breaded Products) f. Non-Food g. Produce
2. Retail (grocery)	a. Ambient, Canned, Dry b. Baked Goods c. Dairy d. Frozen (Includes prepared foods and entrees; frozen eggs, frozen vegetables and fruits, frozen meats, and frozen juices) e. Meat, Poultry & Fish (Fresh, including breaded Products) f. Non-Food g. Produce
3. Bulk Fresh Produce (DOCCS)	Specific fresh produce items only (NYS Department of Corrections and Community Supervision, Food Production Center, Rome, NY)

**EXCLUSIONS:**

The intent of this Solicitation is to produce Contracts for the supply of Food and Non-Food items. Items which are sold by Bidders, but do not fit into these categories are excluded from purchase through the resulting Contracts. Alcoholic beverages are expressly excluded from the scope of the resultant Contracts.

1.3 Regions

For the purposes of this Solicitation and resulting Contracts, the counties of New York State are divided into four (4) separate “Regions”. Below is a listing of the Regions and the applicable counties that are included in each of the Regions. Lot 1 and Lot 2 includes all Regions. Lot 3 only covers the Food Production Center Plant of the NYS Department of Corrections and Community Supervision (DOCCS) in Rome, NY. Bidders must indicate within

Attachment 1 – Pricing (Revised 03/12/2020) what Region(s) and Lot(s) they are bidding. Bidder may bid on any combination of Lots and Regions and be awarded any combination of Lots and Regions on one Contract. However, Bidder must bid on all categories within Lot 1 and/or Lot 2 for the Regions they intend to bid. In addition, when bidding on a Region for Lot 1 and/or Lot 2, Bidder must be capable of supplying all Categories (Food and Non-Food.) of the Lot(s) on their Price Guides to all Authorized Users in such Region. If bidding on Lot 3, Bidders must bid on all items listed within Lot 3.

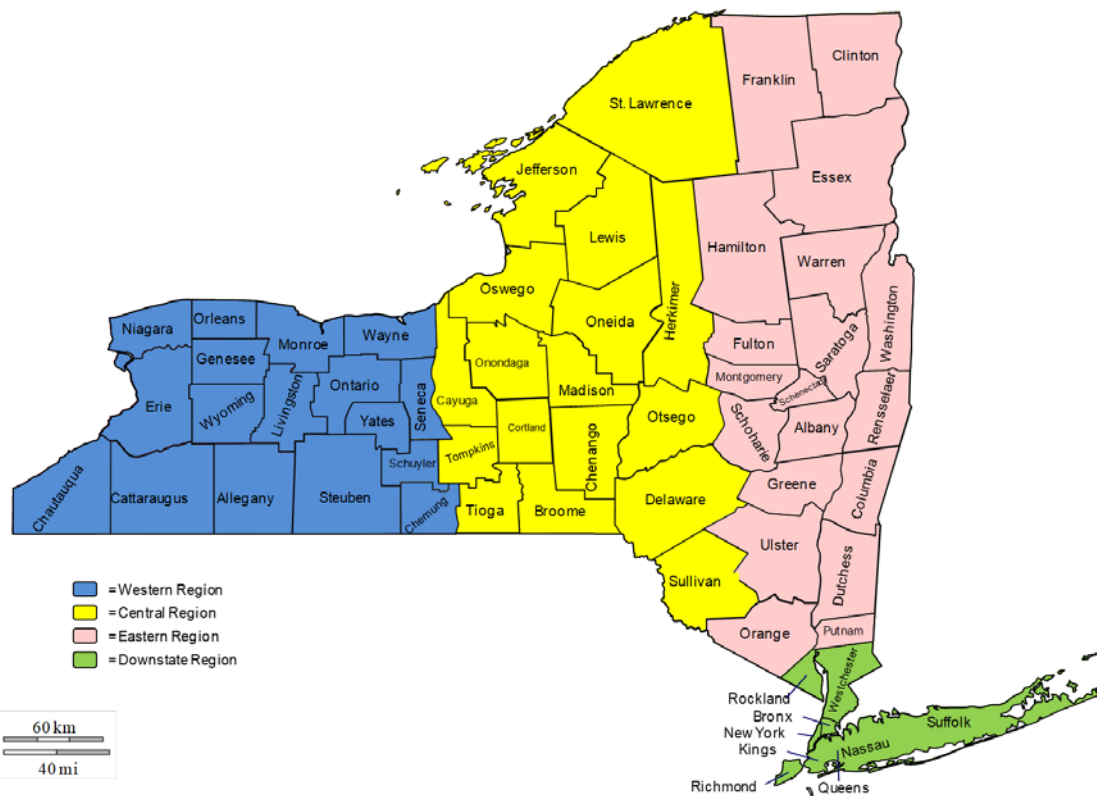
The four Regions are:

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

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

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

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



1.4 Estimated Quantities

A Contract resulting from this Solicitation shall be an estimated quantity Contract. No specific quantities are represented or guaranteed, and the State provides no guarantee of individual Authorized User participation. The Contractor must furnish all quantities actually ordered at or below the Contract prices. The anticipated dollar value of the award for this Solicitation, based on historical purchases under previous awards, is approximately \$74 million annually, for Lots 1 and 2 on a statewide basis, and \$1.3 million annually for Lot 3. The individual value of each resultant Contract is indeterminate and will depend upon the number of Contracts issued and the competitiveness of the pricing offered. Authorized Users will be encouraged to purchase from Contractors who offer the Products 23199bid (Revised 03/12/2020)



and pricing that best meet their needs in the most practical and economical manner. See Appendix B clauses, Participation in Centralized Contracts and Estimated/Specific Quantity Contracts.

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

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

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

#### 1.5 Key Events/Dates

EVENT	DATE	TIME
Solicitation Release	February 5, 2020	N/A
Deadline for Submission of Intent to Bid	March 10, 2020	5:00 PM ET
Closing Date for First Round of Bidder Questions	February 20, 2020	5:00 PM ET
OGS Procurement Services' Responses to First Round of Bidder Questions	March 5, 2020 (tentative)	N/A
Bid Opening / Due date for Bids	<b>March 19, 2020</b>	11:00 AM ET
Contract Approval Date / Award Publish Date	June 24, 2020 (tentative)	N/A

#### 1.6 Intent to Bid

A Bidder is requested to indicate its intent to bid by sending an e-mail titled "INTENT TO BID-[BIDDER NAME]" to [OGS.sm.SST\\_food@ogs.ny.gov](mailto:OGS.sm.SST_food@ogs.ny.gov) on or before the date and time indicated in Section 1.5, *Key Events/Dates*. The e-mail should include the Bidder's company name and a contact name and contact information. The intent to bid is discretionary.

#### 1.7 NYS Contract Reporter

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

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

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

### 1.8 Bidder Questions

All questions regarding this Solicitation should be submitted using Attachment 7 – *Bidder Questions Form*, citing the applicable Solicitation document name and document section. The completed form must be emailed to [OGS.sm.SST\\_food@ogs.ny.gov](mailto:OGS.sm.SST_food@ogs.ny.gov) by the date and time indicated in Section 1.5, *Key Events/Dates*. Questions submitted after the deadline indicated may not be answered. A Bidder is strongly encouraged to submit questions as soon as possible. Answers to all questions of a substantive nature will be provided to all prospective Bidders in the form of a question and answer document which will be posted to the OGS website and will not identify the Bidder asking the question. Notification of this posting will be advertised in the NYS Contract Reporter (“NYSCR”). Your company must select the “opt-in” option within the Contract Reporter ad to receive notification updates of this Solicitation.

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

### 1.9 Summary of Policy and Prohibitions on Procurement Lobbying

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

### 1.10 Definitions

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

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

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

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

“**Categories**” shall refer to classifications given to each Product to define which percent markup is applied within each of the Lots. Categories for each Lot are detailed in Section 6.3.3, *Percent Markup*.

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

“**Food**” shall refer to Products that are edible.

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

**“Lots”** shall refer to several items bid as a single group. For the purposes of this Solicitation, there are three separate Lots: Lot 1, Commercial (Statewide), Lot 2, Retail (Statewide), and Lot 3, Bulk Fresh Produce (DOCCS).

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

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

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

**“NYS Holidays”** refers to the legal holidays for State employees in the classified service of the executive branch, as more particularly specified on the website of the NYS Department of Civil Service. This includes the following: New Year’s Day; Martin Luther King Day; Washington’s Birthday (observed); Memorial Day; Independence Day; Labor Day; Columbus Day; Veteran’s Day; Thanksgiving Day; and Christmas Day.

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

**“Preferred Source Products”** shall refer to those Products that have been approved in accordance with New York State Finance Law § 162.

**“Preferred Source Program”** shall refer to the special social and economic goals set by New York State in State Finance Law § 162 that require a governmental entity purchase select Products from designated organizations when the Products meet the “form, function and utility” requirements of the governmental entity. Under State Finance Law § 163, purchases of Products from Preferred Sources are given the highest priority and are exempt from the competitive bidding requirements. The New York State Preferred Sources include: The Correctional Industries Program of the Department of Corrections and Community Supervision (“Corcraft”); New York State Preferred Source Program for People Who Are Blind (“NYSPSP”); and the New York State Industries for the Disabled (“NYSID”). These requirements apply to state agencies, political subdivisions and public benefit corporations (including most public authorities).

**“Price Guides”** is a complete Product line listing created and maintained by the Contractor. The Price Guide contains “NYS Net Delivered Price” for NYS Authorized Users and shall be updated as listed herein under Section 6.4.3, *Price Changes*.

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

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

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

#### 1.11 Appendices and Attachments

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

Appendix A – *Standard Clauses for New York State Contracts (October 2019)*

Appendix B – *General Specifications (April 2016)*

Attachment 1 – *Pricing (Revised 03/12/2020)*

23199bid (Revised 03/12/2020)

Attachment 2 – *NYS Required Certifications*  
Attachment 3 – *Encouraging Use of NYS Businesses* (Revised 03/05/2020)  
Attachment 4 – *Insurance Requirements*  
Attachment 5 – *Bidder Information Questionnaire*  
Attachment 6 – *Bidder Submission Checklist* (Revised 03/12/2020)  
Attachment 7 – *Bidder Questions Form*  
Attachment 8 – *Report of Contract Usage*

### 1.12 Conflict of Terms

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

1. Appendix A, Standard Clauses for New York State Contracts;
2. The Solicitation (Revised 03/12/2020);
3. Appendix B, General Specifications;
4. All other appendices and attachments to the Solicitation (Revised 03/12/2020).

## 2 BIDDER QUALIFICATIONS

Bidder is advised that the State's intent in having the requirements listed below is to ensure that only qualified and reliable Contractors perform the work of the resulting Contract. Bidder shall have the burden of demonstrating to the satisfaction of Procurement Services that it can perform the work required. Procurement Services retains the right to request any additional information pertaining to the Bidder's ability, qualifications, financial capacity, financial stability, and procedures used to accomplish all work under the resulting Contract as it deems necessary to ensure safe and satisfactory work. A Bidder shall meet the following qualifications:

### 2.1 General

Unless otherwise specified, all Solicitation provisions apply to all Lots.

Bidder must maintain a business establishment with access to adequate inventories of complete Product lines for their awarded Lots as identified and contained in all Product categories listed herein and must be capable of processing and shipping large numbers of consolidated orders to various destinations.

Bidder must be able to service all delivery locations in a Region in a timely and efficient manner and in accordance with the requirements of this Solicitation.

The Bidder must be responsible for administering contract, resolving problems, etc., for all participating branches/warehouses/distribution centers, etc.

### 2.2 Business Experience

Unless Bidder is a current OGS Contract holder under Award 22688 – Food (Retail) or 22794 – Food (Commercial), Bidder shall provide evidence that it has maintained an organization capable of performing the work hereinafter described for each Lot that it bids on, in continuous operation for at least the past three years. The preferred documentation is the submission of a Dun & Bradstreet Business Information Report. If the required business experience is not proven through the submission of a Dun & Bradstreet Business Information Report, then Bidder must provide additional evidence that it meets this requirement.

### 2.3 Authorized Distributor (Lot 1 and Lot 2 Only)

By submitting a bid, Bidder is affirming that they are an authorized distributor for Products being offered. The State reserves the right to request proof of authorization.

## 2.4 Lot 3 Bidders

By submitting a bid, Bidder is affirming that they are capable of providing the Products being offered. The State reserves the right to request proof of authorization.

## 2.5 Web-based Ordering system (For Lots 1 and 2 Only)

Bidder must be able to accept orders via a web-based ordering system as described below in Section 6.10.1, *Web-Based Ordering (Lot 1 and Lot 2 Only)*. The order entry system shall allow an Authorized User to enter orders and shall have full order inquiring capabilities. Bidder shall provide a link to their website on Attachment 5 – *Bidder Information Questionnaire*.

# 3 SPECIFICATIONS

## 3.1 General Product Requirements

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

- weights;
- measures;
- fill of containers;
- drained weights;
- contamination; or
- condition on delivery.

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

All requirements apply to any Product in Attachment 1 - *Pricing (Revised 03/12/2020)*, as well as to any Product that may be purchased from the Contract.

## 3.2 Lot Specific Requirements

### Lot 1 – Commercial

#### Ability to Provide Emergency Service

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

#### Delivery After Receipt of Order

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

### Lot 2 – Retail

Delivery After Receipt of Order

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

**Lot 3 – Bulk Fresh Produce**1. Delivery After Receipt of Order

Delivery is required within seven calendar days unless otherwise arranged with Authorized User  
Contractor must comply with the delivery date indicated on the Purchase Order. If Product is rejected, the replacements must be redeliver within 24 hours.

2. Certificate of Analysis upon receipt of Product

A Certificate of Analysis for fresh, minced, water-packed garlic may be required upon receipt of Product.

## 3. Israeli-grown Products are not acceptable unless specifically approved for use by the Orthodox Union. Proof of approval must be provided your quote to the Authorized User.

## 3.3 Pathogens

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

## 3.4 Frozen Product

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

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

GROUND & DICED MEATS - 45 calendar days

CURED & PROCESSED MEAT - 45 calendar days

## 3.5 Kosher and Passover Certification

Any Product designated as "Kosher" and "PARVE" (prepared without meat, milk, or their derivatives) shall comply and be labeled with a common accepted Kosher symbol as identified by the Chicago Rabbinical Council and listed on their website: [http://www.crcweb.org/agency\\_list.php](http://www.crcweb.org/agency_list.php) and shall meet all the requirements of that certification.

All Baked Goods Products designated as "Kosher" and "PARVE" are to be free of pork and pork by-products. Only vegetable oils shall be used in the making of Products designated as "Kosher" and "PARVE".

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

## 3.6 Grades &amp; Specifications

**3.6.1 Lots 1 and 2**

All Products offered in Attachment 1 - *Pricing (Revised 03/12/2020)* shall be grade B or better, unless otherwise specified.

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

## 3.6.2 Lot 3

Produce	Grade and Specifications	Restrictions	Historical Frequency of Ordering	Estimated Annual Quantity
Carrots	US No.1, Jumbo or equivalent, 50-pound bag.	No individual retail packaging or stickers, no banding, staples or metal twist ties.	Twice Weekly	150,013.60 lbs.
Celery	US No.1	No individual retail packaging or stickers, no banding, staples or metal twist ties.	Twice Weekly	406,902.04 lbs.
Onions	Global, yellow/white, US No.2 or better, 4-5-inch diameter, 50-pound bag.	No individual retail packaging or stickers, no banding, staples or metal twist ties.	Twice Weekly	587,526.98 lbs.
Bell Peppers	US No.1 or Fancy, any color, diameter not less than 3 inches; length not less than 3-1/2 inches.	No individual retail packaging or stickers, no banding, staples or metal twist ties.	Twice Weekly	343,113.62 lbs.
Cabbage	US No.1, large, over 3 pounds per head, peeled and trimmed. Delivered in 1,000-pound bin or tote only; no bags.	No individual retail packaging or stickers, no banding, staples or metal twist ties.	Twice Weekly	776,768.05 lbs.
Bean Sprouts	Fresh; each case must contain a minimum of 10 pounds in one bulk pack poly-lined bag.	No individual retail packaging or stickers, no banding, staples or metal twist ties.	Once Weekly	33,258.42 lbs
Garlic	Fresh, minced, water-packed, minimum 20-pound containers, no metal handles, no glass.	Must provide Certificate of Analysis upon receipt of Product.	Once Weekly	19,166 lbs.
Potatoes	White, peeled, diced ½ inch (packed in water)	Outside of tote must not be damaged, crushed or have any type of debris on it. Totes must be lidded, clean and have a food grade bag liner that is hand-tied in a knot. No zip ties, twist ties, or other clips/ties allowed. Tote must be rigid enough to be double stacked if needed. Totes should be nestable when empty.	Unavailable	460,042 lbs.

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.

## 3.7 Mold, Bacteria, Etc.

Products shall adhere to industry and government standards for levels of mold, bacteria, etc.

## 3.8 Freshness Codes

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

### 3.9 Trans Fats

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

### 3.10 Labeling and Nutritional Information Specification

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

### 3.11 Executive Order 4 Approved Specifications for Food Services

NYS Executive Order Number 4 imposes certain requirements on State Agencies, authorities, and public benefit corporations when procuring Products. Please see Section 6.45, *Environmental Attributes and NYS Executive Order Number 4*, for details. Contractors are encouraged to stock and furnish the following items that meet the Executive Order Approved Specification.

#### 3.11.1 Food Service Containers and Wrappers

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

Link to the specifications of these items:

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

#### 3.11.2 Single Use Food Service Utensils

Covered Products: Light to heavy weight duty, single-use utensils (spoons, forks, knives, soup spoons).

Link to the specifications: <https://ogs.ny.gov/green/y/single-use-food-service-utensils>

## 4 BID SUBMISSION

### 4.1 NYS Vendor File Registration

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

If Bidder is already registered in the New York State Vendor File, the Bidder must enter its Vendor ID on the first page of this Solicitation. Authorized resellers already registered should list the Vendor ID number along with the



authorized reseller information. (The Vendor ID number is not the same as a SOCIAL SECURITY NUMBER or a TIN/FEIN number.)

If the Bidder is not currently registered in the Vendor File, the Bidder must request assignment of a Vendor ID from OGS. Bidder must complete the OSC Substitute W-9 Form ([http://www.osc.state.ny.us/vendors/forms/ac3237s\\_fe.pdf](http://www.osc.state.ny.us/vendors/forms/ac3237s_fe.pdf)) and submit the form to OGS in advance of Bid submission. Please send this document to the Designated Contact identified in the Solicitation. In addition, if an authorized reseller is to be used that does not have a Vendor ID, an OSC Substitute W-9 form should be completed by each authorized reseller and submitted to OGS. OGS will initiate the vendor registration process for all Bidders and authorized resellers. Once the process is initiated, registrants will receive an e-mail identifying their Vendor ID and instructions on how to enroll in the online Vendor Self-Service application.

For more information on the Vendor File please visit the following website:

<https://www.osc.state.ny.us/vendors/index.htm>

#### 4.2 Format of Bid Submission

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

Situations susceptible to Disqualification may include:

- E-mail or facsimile Bid submissions are not acceptable, and
- Absent Price Pages (Attachment 1 - *Pricing (Revised 03/12/2020)* **or not supplying the Price Guide in the format mandated, using Attachment 1**, is not acceptable.)

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

Bidders are responsible for the accuracy of their Bids. All Bidders are directed to take extreme care in developing their Bids. Bidders are cautioned to carefully review their Bids prior to Bid submission. A Bid that fails to conform to the requirements of the Solicitation (*Revised 03/12/2020*) may be considered non-responsive and may be rejected.

#### 4.3 Content

A complete Bid consists of the following:

1. Two (2) USB flash drives containing:
  - a. Pages 1 and 2 of the Solicitation (*Revised 03/12/2020*) (signed and scanned) (PDF);
  - b. Completed Attachment 1 – *Pricing (Revised 03/12/2020)* (must be submitted as an Excel file);
  - c. Completed Attachment 2 – *NYS Required Certifications* with original ink signatures (PDF);
  - d. Completed Attachment 3 – *Encouraging Use of NYS Businesses (Revised 03/05/2020)* (Word);
  - e. Proof of compliance with Attachment 4 – *Insurance Requirements* (PDF);
  - f. Completed Attachment 5 – *Bidder Information Questionnaire* (Excel);
  - g. Completed Attachment 6 – *Bidder Submission Checklist (Revised 03/12/2020)* (Excel);
  - h. Completed ST-220CA, Contractor Certification, notarized with original ink signatures (PDF);
  - ~~i. Completed MWBE 100, MWBE Utilization Plan (if applicable) (PDF);~~
  - i. Completed Form EEO100, Equal Employment Opportunity Staffing Plan (PDF);
  - j. Standard Vendor Responsibility Questionnaire (completed and scanned to PDF) or Certification that Questionnaire has been completed online (PDF);
  - k. Evidence that Bidder has maintained an organization capable of performing the work described for each Lot that it bids on, in continuous operation for at least the past three years, in accordance with Section 2.2, *Business Experience*;

- l. Copy of or a link to at least one governmental, local government, or cooperative purchasing contract and contract pricelist that shows the percent markup, in accordance with Section 5.1, *Method of Award*;
  - m. Copies of a recent (within 24 months prior to bid opening) New York State Department of Agriculture and Markets inspection report demonstrating compliance (or acceptable equivalent as determined by OGS) and a New York State food warehouse license (or acceptable equivalent as determined by OGS) in accordance with Section 6.17, *Quality Control and Safety*, for each distribution center named by the Bidder in Attachment 1 – *Pricing (Revised 03/12/2020)*; and
  - n. If any Bid Updates were issued (including any responses to Bidder Inquiries), completed, signed and submitted copies of All Bid Updates agreeing to amended terms.
2. Original paper versions of each of the following (to be placed in a loose-leaf binder and tabbed):
- a. Pages 1 and 2 of the Solicitation (*Revised 03/12/2020*) with original ink signatures;
  - b. Completed Attachment 2 – *NYS Required Certifications* with original ink signatures;
  - c. Completed Attachment 3 – *Encouraging Use of NYS Businesses (Revised 03/05/2020)*;
  - d. Proof of compliance with Attachment 4 – *Insurance Requirements*;
  - e. Completed Attachment 5 – *Bidder Information Questionnaire*;
  - f. Completed Attachment 6 – *Bidder Submission Checklist (Revised 03/12/2020)*;
  - g. Completed ST-220CA, Contractor Certification, notarized with original ink signatures;
  - ~~h. Completed MWBE 100, MWBE Utilization Plan (if applicable) (PDF);~~
  - h. Completed Form EEO100, Equal Employment Opportunity Staffing Plan;
  - i. Standard Vendor Responsibility Questionnaire (completed and signed) or Certification that Questionnaire has been completed online; and
  - j. If any Bid Updates were issued (including any responses to Bidder Inquiries), completed, signed with original ink signatures and submitted copies of All Bid Updates agreeing to amended terms.

Also, please note that in the case of discrepancies between paper copies and USB flash drive submissions of the documents required in both formats, the electronic USB flash drive copy shall take precedence over the paper copy.

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

#### 4.4 Bid Envelopes and Packages

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

1. BID ENCLOSED (preferably bold, large print, all capital letters)
2. Solicitation number (IFB #23199)
3. Bid Opening Date and Time
4. The number of boxes or packages (e.g., 1 of 2; 2 of 2)

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

#### 4.5 Bid Delivery

Bids shall be delivered to the following address on or before 11:00 a.m. ET, on or before the Bid opening date as stated in Section 1.5, *Key Events/Dates*:

State of New York Executive Department  
Office of General Services  
Procurement Services  
Corning Tower - 38th Floor Reception Desk  
Empire State Plaza

Albany, NY 12242

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

#### 4.6 Important Building Access Procedures

To access the Corning Tower, all visitors must check in by presenting photo identification at the information desk. Delays may occur due to a high volume of visitors. Visitors conducting Procurement Services business are encouraged to pre-register for building access by contacting the Procurement Services receptionist at (518) 474-6262 at least 24 hours prior to the visit. Visitors who are not pre-registered will be directed to a designated phone to call the Procurement Services receptionist. The receptionist will register the visitor at that time but delays may occur. Building access procedures may change or be modified at any time.

#### 4.7 NYS Required Certifications

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

#### 4.8 Bid Deviations

Bids must conform to the terms set forth in the Solicitation. As set forth in Attachment 7 - *Bidder Questions Form*, if Bidder intends to submit a Bid that deviates from the requirements of the Solicitation in any way, the proposed deviations should be submitted during the Questions period so that they may be given due consideration prior to the submission of Bids. Material deviations (including additional, inconsistent, conflicting, or alternative terms) submitted with the Bid may render the Bid non-responsive and may result in rejection of the Bid.

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

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

#### 4.9 Electronic Bid Opening Results

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

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

#### 4.10 Bid Liability

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

#### 4.11 Firm Offer

Bids must remain an effective offer, firm and irrevocable, for at least 60 calendar days from the due date, unless the time for awarding the Contract is extended by mutual consent of OGS and the Bidder. A Bid shall continue to 23199bid (Revised 03/12/2020)

remain an effective offer, firm and irrevocable, subsequent to such 60 calendar-day period until either tentative award of the Contract by OGS is made or withdrawal of the Bid in writing by the Bidder.

#### 4.12 NYS Reserved Rights

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

- A. Reject any or all Bids received in response to the Solicitation;
- B. Withdraw the Solicitation at any time at the sole discretion of the State;
- C. Make an award under the Solicitation in whole or in part;
- D. Disqualify any Bidder whose conduct and/or Bid fails to conform to the requirements of the Solicitation;
- E. Seek clarifications and revisions of the Bid;
- F. Amend the Solicitation prior to the Bid opening to correct errors or oversights, or to supply additional information as it becomes available;
- G. Direct Bidders, prior to the Bid opening, to submit Bid modifications addressing subsequent Solicitation amendments;
- H. Change any of the schedule dates with notification through the NYS Contract Reporter;
- I. Eliminate any mandatory, non-material requirements that cannot be complied with by all of the prospective Bidders;
- J. Waive any requirements that are not material;
- K. Utilize any and all ideas submitted in the Bids received;
- L. Adopt all or any part of a Bidder's Bid in selecting the optimum configuration;
- M. Negotiate with a Bidder within the Solicitation requirements to serve the best interests of the State. This includes requesting clarifications of any or all Bids;
- N. Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Bidder's Bid and/or to determine a Bidder's compliance with the requirements of the Solicitation;
- O. Select and award the Contract to other than the selected Bidder in the event of unsuccessful negotiations or in other specified circumstances as detailed in the Solicitation;
- P. Accept and consider for Contract Award Bids with non-material Bid Deviations or non-material Bid defects such as errors, technicalities, irregularities, or omissions;
- Q. Use any information which OGS obtains or receives from any source and determines relevant, in OGS's sole discretion, for the purposes of bid evaluation and Contractor selection;
- R. Consider a proper alternative where an evidently incorrect reference/parameter/component/Product/model/code number is stated by the State or the Bidder;
- S. Reject an obviously unbalanced Bid as determined by the State; and
- T. Conduct Contract negotiations with the next responsible Bidder, should the Agency be unsuccessful in negotiating with the selected Bidder;
- U. Make no award for any Product, region, or Lot, as applicable, for reasons including, but not limited to, unbalanced, unrealistic or excessive Bidder pricing, a change in Authorized User requirements and/or Products, or an error in the Solicitation (e.g., use of incorrect reference, pack size, description, etc.). In such case, evaluation and ranking of Bids may be made on the remaining Products, regions, or Lots.
- V. Offer a Bidder the opportunity to provide supplemental information or clarify its Bid, including the opportunity to explain or justify the balance, realism, and/or reasonableness of its pricing.
- W. Award Contracts on a rolling or staggered start basis, either in whole or in part. Contracts awarded in this method shall be coterminous with the first Contract awarded as a result of this Solicitation.

#### 4.13 Incorporation

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

## 5 METHOD OF AWARD

### 5.1 Method of Award

OGS desires to make awards in a multiple award structure (multiple awards per Region) for each of the Lots described in Section 1.2, *Scope*, to all responsive and responsible Bidder(s) who meet minimum qualifications and whose pricing demonstrates that Products offered will be delivered at a reasonable price as determined by OGS Procurement Services. "Reasonable prices" may be determined by reviewing Percent Markups and net prices offered to the General Services Administration ("GSA"), prices on any previously awarded NYS Contract(s), prices offered by other Bidders for this Solicitation, Contracts with other state, government, or cooperative entities, etc. At the time of the Bid opening, Bidder must provide copies of, or a link to at least one governmental, local government, or cooperative purchasing Contract (GSA, NASPO ValuePoint, Sourcewell, NYS, other State, etc.) and Contract pricelists that show the Percent Markup and net prices. In the event that such Contracts are not available, the Bidder shall supply invoices of sales to large entities or corporations with repeat business detailing the Percent Markup and net prices. New York State reserves the right to reject any Bidder or Product that does not demonstrate reasonable pricing for this Solicitation.

In the event when all Lots cannot be awarded simultaneously before the expiration of the current Award 22688 – Food (Retail), Lot 2 – Retail will take priority to be awarded to avoid a lapse in coverage.

### 5.2 Periodic Recruitment

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

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

### 5.3 Procurement Instructions for Authorized Users

The resultant Contracts will be issued under a multiple award structure. Authorized Users shall procure Products that best meet their form, function, and utility requirements.

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

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

### 5.4 Notification of Award

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

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

## 6 TERMS AND CONDITIONS

### 6.1 Contract Term and Extensions

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

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

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

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

### 6.2 Short term Extension

This section shall apply in addition to any rights set forth in Appendix B, *Contract Term – Extension*. In the event a replacement Contract has not been issued, any Contract let and awarded hereunder by the State may be extended unilaterally by the State for an additional period of up to 30 calendar days upon notice to the Contractor with the same terms and conditions as the original Contract and any approved modifications. With the concurrence of the Contractor, the extension may be for a period of up to 90 calendar days in lieu of 30 calendar days. However, this extension automatically terminates should a replacement Contract be issued in the interim.

### 6.3 Price

Pricing will be collected using Attachment 1 – *Pricing (Revised 03/12/2020)* in accordance with the Instructions tab listed within Attachment 1. “NYS Net Delivered Price” is computed as follows:

1. The **bidder supplier cost (equal to the last invoiced** Cost of Product plus Incoming Freight\_minus applicable Allowance) multiplied by the Category Percent Markup results in “markup in dollars”.
2. The “markup in dollars” is then added to the **bidder supplier cost** to calculate the “NYS Net Delivered Price”.

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

Contractor's distribution center used for each Region is set forth in Attachment 1 – *Pricing (Revised 03/12/2020)*. The Distribution Center(s) shall be used throughout the Contract term. In the event the distribution center location changes, Contractor must obtain prior approval from OGS.

#### 6.3.1 Bidder Supplier Cost

The Bidder Supplier Cost shall be the last invoiced cost for each item. Bidder shall include the most recent cost of each item on Attachment 1 – Pricing (Revised 03/12/2020).

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

### 6.3.2 Negotiated Pricing on Behalf of OGS

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

### 6.3.3 Percent Markup

Bidder's percent markup shall be bid in Attachment 1 - Pricing (Revised 03/12/2020) on the tab entitled Markups and shall include, but not be limited to, any and all costs necessary to successfully serve all NYS Authorized Users, such as:

- delivery to the door at facilities where there is no dedicated receiving dock
- palletized or cart/hand truck delivery as required by Authorized User (see Section 6.14, *Product Delivery*)
- "restricted" delivery (see Section 6.15, *Restricted Delivery*)
- use of appropriate vehicles to accommodate site limitations
- compliance with local ordinances and restrictions
- furnishing special packaging for certain Authorized Users security requirements
- maintenance and furnishing of updated Price Guides for all Lots, including special designations by Product as needed, and web-based ordering system (for Lot 1 and Lot 2)

Bidder must bid on all Categories within the Lot(s)/Regions for which they intend to bid. A Bidder is only required to enter Markups for the Categories within the Lot(s)/Region(s) for which they are bidding. Failure to enter markup percentages for any Category within the Lot/Region being bid may result in disqualification of the Bid.

Markups shall be automatically applied to the listed Products.

Different percent markups may be bid for each Category in a Lot or different Regions. Bidder will designate which Regions they are bidding in Attachment 1 – Pricing (Revised 03/12/2020). The categories for each Lot are defined in Section 1.2, *Scope*.

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

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

### 6.3.4 New York State Bottle Bill

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

### 6.3.5 Incoming Freight

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

### 6.3.6 Allowances

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

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

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

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

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

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

### 6.3.7 Cost Adjustments from Bid Opening to Award

Since there will be a time lapse between the opening of bids and the start of the Contract, if the time elapsed exceeds the update frequency in the Section 6.4.3, *Price Changes*, the relevant categories of the Price Guide submitted by the Bidder recommended for award will be adjusted to reflect any increase or decrease to the cost for each item using the method detailed in Section 6.4.3, *Price Changes*.

This adjustment will be allowed once OGS has awarded Contract(s) to winning Bidders. Awardee(s) will be notified and then provided the opportunity to issue its latest Price Guide, if applicable.



### 6.3.8 Rounding Calculations for Determining Costs and Final Price

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

### 6.3.9 Rebates

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

### 6.3.10 Packaging/Container Security Requirements for Selected Authorized Users

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

## 6.4 Purchases from Price Guide

Authorized Users are to make purchases from the Contractor's Price Guide identified in Section 6.4.1, *Price Guides*. Prices established in the Price Guide shall be calculated as described in Section 6.3, *Price*, using cost as defined in Section 6.3.1, *Bidder Supplier Cost*. All Price Guides shall be submitted using Attachment 1 – *Pricing (Revised 03/12/2020)*.

### 6.4.1 Price Guides

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

Price Guides shall include at least the following fields:

- Product Category (i.e., Dairy, Produce, Meat/Poultry/Fish, Frozen, Baked Goods, etc.);
- Product Brand or Manufacturer;
- Product Stock Number;
- New York State Product;
- Product Description;
- Unit of Measure;
- Pack/Quantity;
- Size;
- Supplier Cost;
- Incoming Freight if not included in Delivered Price;
- Applicable Allowances as defined in Section 6.3.6, *Allowances*, Applied Per Item;
- Percent Markup;
- Markup in Dollars; and
- “NYS Net Delivered Price” (as defined in Section 6.3, *Price*).

Price Guides will be reviewed and verified against current market prices to ensure that the State is receiving pricing that is reasonable when compared with the industry at large. Please also see Section 6.3.7, *Cost Adjustments from Bid Opening To Award*, and Section 6.4.3, *Price Changes*.

Price Guides shall be updated weekly, monthly, and quarterly as required in Section 6.4.3, *Price Changes*. OGS will determine the effective dates of the Price Guides being used immediately succeeding Contract start date(s). The effective dates of the weekly Price Guide shall be specified by the Contractor and shall

be fixed for a one-week period. The monthly prices shall be effective beginning the first day of the month and shall be fixed for the one-month period. The quarterly prices shall be effective beginning the first day of the calendar quarter and shall be fixed for the one-quarter period. Pricing shall be effective on the date of delivery.

All prices in the Price Guides distributed to Authorized Users shall be identical for all distribution locations. Additionally, all items in the Price Guides shall be available to all Authorized Users in the awarded region. Ideally, the Product numbers (i.e., stock numbers) should be the same for identical items from all participating branches/warehouses/distribution centers, etc. Where Products are not numbered identically, Contractor shall be required to submit cross-reference sheets.

NOTE: Both before and after award, the State reserves the right to:

- modify the fields that are to be displayed in the Price Guide;
- to add or delete Products from the Price Guides as deemed necessary.

**6.4.2 Price Guide Maintenance**

Contractor(s) shall submit updated Price Guide to OGS in electronic format to the attention of the individual designated by Contract. The latest Price Guide will then be published to OGS’s website. There may be times when the Contractor has no changes to report in their Price Guide (i.e., no price adjustments or Product add/delete). Contractor may elect to continue using the previous Price Guide as long as it remains current. When the Contractor elects to use the previous Price Guide, Contractor must notify OGS in writing that there were no changes to the Price Guide and Contractor is using the previous Price Guide.

At no charge to Authorized Users, the Contractor must prepare, supply, and keep Price Guide current. Identical Price Guides must be made available electronically to Authorized Users and OGS and must be available at least one (1) business day before the effective date of the Price Guide. Pre-approval of Price Guides by OGS is not required. However, OGS reserves the right to remove Products if it deems the prices unreasonable or not within the scope of the Contract. Electronic and/or hard copies of the Price Guide must be submitted to Authorized Users, upon request. All information in all distributed copies of the Price Guide (hard copies, electronic transmittals and web-based pricing) shall be identical. In the event of a discrepancy, it is the Contractor’s obligation to notify OGS and Authorized Users of the governing source pricing (hard copy, electronic transmittals, or web based). Prices may be reduced at any time; however, price increases other than those discussed in Section 6.4.3, *Price Changes*, shall not be permitted.

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

**6.4.3 Price Changes**

Prices established in the Price Guide shall be calculated as detailed in Section 6.3, *Price*, (less applicable allowances etc.). Adjustments (increases or decreases) shall be made as shown below:

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

Lot 3 -Bulk Fresh Produce	specific fresh produce items	Weekly
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Adjustments shall be calculated and reflect the reduction from applicable allowances as defined in Section 6.3, *Price*. All Price Guides created for this solicitation and resultant award are subject to audit by the State.

#### 6.5 Opportunity Buys

The State may utilize drop shipment, spot or opportunity buy, or trailer load incentives when an Authorized User is able to benefit from either the Contractor or third party food vendor. To qualify for the drop shipment, spot or opportunity buy, or trailer load incentive, the order must be greater than \$2,500. The Contractor shall have the right of first refusal to fulfill the Authorized User's request. The Contractor will have 48 hours, from when an Authorized User initiates a drop shipment, spot or opportunity buy, or trailer load request to notify the Authorized User whether Contractor would like to fulfill the Authorized User's request. Should the Contractor be unable to fulfill the request within the 48 hours time period, the Authorized User shall be able to initiate a drop shipment, spot or opportunity buy or trailer load order with a third party vendor. The third party vendor will transport the food order directly to the Authorized User location, bypassing the Contractor from physically handling the food order. In the instance that the Authorized User utilizes a third party for transportation, the Contractor will not be responsible for the actual receiving of the drop shipment at its warehouse or transporting it to the Authorized User facility.

If the Contractor does not process or transport the drop shipment, spot or opportunity buy, or trailer load order the Contractor shall not invoice the Authorized User for any charges for the drop, spot or opportunity buy, or trailer load shipment order.

In instances where Contractor has participated to process the drop shipment, spot or opportunity buy, or trailer load, the Contractor may add a Percent Markup to the delivered invoiced price of the order not to exceed the Category Markup bid in Attachment 1 - *Pricing (Revised 03/12/2020)* for the appropriate Category. Contractor may engage a third party in such a purchase, however, no change from the initial supplier's spot price shall be allowed. Opportunity buy purchases must be identified in the Contractor's regular reporting requirements to OGS. See also Section 6.36, *Reporting*.

#### 6.6 Best Pricing Offer

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

#### 6.7 Price Structure

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

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

## 6.8 Samples and Testing

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

## 6.9 New York State Food Products

Bidders and Contractors shall be required to designate New York State Food Products as defined in Section 1.10, *Definitions*, in their Price Guide(s). State Agencies are expected, and New York state public authorities and entities are strongly encouraged, to purchase New York State Food Products, unless the item does not meet their institutional or programmatic needs.

### 6.9.1 Healthier Food Products (Meet NYS Food Standards/Guidelines)

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

### 6.9.2 Designate Healthier Food Products

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

### 6.9.3 New York State Education Department NYS Food Products Definition

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

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

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

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

Additional information and guidance regarding Additional State Subsidy for Purchasing New York State Food Products for school lunch programs and the "30% NYS Initiative" is located at:

<http://www.cn.nysed.gov/content/additional-state-subsidy-purchasing-new-york-state-food-products>

## 6.10 Ordering

Orders shall be accepted by the Contractor between the hours of 8:00 A.M. through 5:00 P.M. ET, Monday through Friday, except legal holidays. Purchase Orders shall be made in accordance with the terms set forth in Appendix B, *Purchase Orders*. Authorized Users may submit orders over the phone, and, if available, may submit orders electronically via web-based ordering, e-mail, or facsimile at any time. Orders submitted shall be deemed received by Contractor on the date submitted.

All orders shall reference Contract number, requisition, and/or Purchase Order number (if applicable). Upon Contractor's receipt of an order, confirmation is to be provided to the Authorized User electronically or via facsimile.

Order confirmation should be sufficiently detailed, and include, at a minimum, purchase price, date of order, delivery information (if applicable), Authorized User name, and sales representative (if applicable).

#### **6.10.1 Web-Based Ordering (Lot 1 and Lot 2 Only)**

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

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

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

#### **6.10.2 Accessibility of Web-Based Information and Applications Policy**

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

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

#### **6.11 Purchasing Card Orders**

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

## 6.12 Minimum Order

### **Lot 1 - Commercial**

Minimum order is \$1,500 for delivery to a single location. The \$1,500 minimum is for aggregate total of all Products delivered to one location; Products may be on more than one purchase order, Products may be on more than one invoice.

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

### **Lot 2 - Retail**

Minimum order is \$200 for delivery to a single location. The \$200 minimum is for aggregate total of all Products delivered to one location; Products may be on more than one purchase order, Products may be on more than one invoice.

### **Lot 1 – Commercial and Lot 2 – Retail**

All orders shall be labeled and packaged adequately to assure safe handling and proper delivery. Authorized Users shall be advised to combine orders to meet the minimum order. Contractor shall not be required to identify and combine multiple orders received from various departments within a single Authorized User in order to meet the minimum. Contractor may choose to waive delivery fees if multiple orders, under the minimum, are delivered on the same day to the same Authorized User.

There shall be no additional charges, fees, delivery costs, etc., for back orders (Product previously ordered and not delivered by Contractor). Contractor may elect to honor orders for less than the minimum order.

## 6.13 Invoicing and Payment

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

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

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

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

#### 6.14 Product Delivery

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

In Addition, Contractor directly, or through its subcontractor, shall be able to deliver all items/Product categories listed herein with evenly spaced deliveries including weeks with legal holidays to all Authorized Users on a consolidated basis. Delivery shall be made in accordance with instructions on the purchase order from each facility. Deliveries shall be on weekdays during normal business hours, as determined by the facility, except/excluding legal holidays

NOTE: Some large Authorized Users may require as many as three deliveries per week.

Some locations (psychiatric and developmental facilities) may accept Saturday delivery. Correctional facilities will not accept Saturday delivery. For some facilities, delivery may be required to more than one building.

After an Authorized User places an order, Contractor shall work with the Authorized User to establish mutually beneficial dates of delivery, to the extent possible. Contractor shall contact Authorized User prior to making delivery if regularly scheduled delivery date is changed. Any deviations from the set delivery schedule must be acceptable to both parties.

#### 6.15 Restricted Delivery

Price includes "restricted" delivery. Delivery to some Authorized Users, particularly Correctional and NYS Office of Mental Health facilities, have "restricted" deliveries, which include restrictions around time or process for delivery. Delivery must be made during certain hours, generally between 8:30 A.M. to 10:30 A.M. and 12:30 P.M. to 2:30 P.M.ET, and must be made only on weekdays (Monday through Friday) except/excluding holidays. Other restrictions, include but are not limited to, thorough inspection of vehicle/trailer and needing security clearances. These restrictions may also apply for deliveries to other Authorized Users. It should be noted that correctional facilities occasionally have "lock downs" during which time there is no exit or entry.

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

#### 6.16 Smaller Vehicle Use for Delivery – For Lot 2 - Retail

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

#### 6.17 Quality Control and Safety

Contractor shall have Sanitation Standard Operating Procedures (SSOP), as well as a written quality control program readily available for submission to OGS upon request that ensures all Products are handled in a manner that complies with all Hazard Analysis & Critical Control Points (HACCP) regulatory requirements as well as Preventive Controls for Human Food Rule a copy of which is available at: <https://agriculture.ny.gov/food-safety/food-safety-modernization-act#contact-food-safety> and Sanitation Standard Operating Procedures (SSOP)

which can be found here: [https://www.fsis.usda.gov/wps/wcm/connect/4cafe6fe-e1a3-4fcf-95ab-bd4846d0a968/13a\\_IM\\_SSOP.pdf?MOD=AJPERES](https://www.fsis.usda.gov/wps/wcm/connect/4cafe6fe-e1a3-4fcf-95ab-bd4846d0a968/13a_IM_SSOP.pdf?MOD=AJPERES)

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

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

#### 6.18 Recalled Products

The Contractor shall have the ability to track all Products delivered. The Contractor shall have a Product recall program that provides for immediate notification to all Authorized User facilities, including OGS and Authorized Users' central offices that have received the recalled Products. The Contractor is responsible for picking up and replacing all Products that are subject to recall and insuring that all manufacturers and suppliers to the Contractor have the same requirements in place. The Authorized User shall not be responsible for the pickup and replacement cost of any recalled Product. Subsequent credits must be applied, as applicable. A final report shall be made to OGS and all Authorized Users' central offices stating number of cases shipped, locations and number of returns.

#### 6.19 Refrigeration

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

#### 6.20 Palletization

Contractor shall furnish commodity palletized on either 48" x 40" OR 40" x 32" four way GMA pallets as instructed by the Authorized User. Overall height, commodity plus pallet, shall not exceed 66"; maximum weight not to exceed 2,500 pounds. All shipping units shall have a uniform block and tier. Containers shall be strapped to pallets or shrink-wrapped to prevent movement of the load. Pallet shall be returned or exchanged to Contractor at time of delivery, on subsequent deliveries, or as arranged between the Contractor and the Authorized User.

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

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

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

#### 6.21 Strapping/Shrink Wrapping

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

#### 6.22 Out of Stock/Not Available Product

Contractor shall inform Authorized User of the availability date of non-filled and partial orders within 24 to 36 hours prior to scheduled delivery. In the event of out of stock/not available Product situations, there shall be no substitution of Products ordered without the express authorization of the Authorized User. Such substitutions shall 23199bid (Revised 03/12/2020)



be of same or better grade, quality, etc. Substitutions should not be made on a continuing basis. Explanation of repeated/continued substitutions shall be made to the State. Out-of-stock/not available Product situations may be a basis for cancellation of Contract and/or charging back for open market purchase or any other appropriate remedies. The Authorized User shall not be liable for unauthorized Product substitution.

#### 6.23 Unusable Product

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

#### 6.24 Products Left on Dock

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

#### 6.25 Fill Rate

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

#### 6.26 Fuel Surcharge

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

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

For example, if \$4.00 is the price of diesel on the date of bid opening and \$6.20 is the current price, the difference above 1.5 times the price at time of bid opening is \$.20. Therefore, a surcharge of \$1.00 (\$1.00 for every twenty cents) per delivery may be added.

The increase shall be figured in whole increments only. It is the responsibility of the Contractor to notify OGS of any request. All fuel surcharges shall take effect after written approval by OGS. Fuel surcharges will be reviewed (and updated, if necessary) weekly once a fuel surcharge has been implemented.

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

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

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

If Contractor is participating in an Opportunity Buy as the distributor, Contractor shall be allowed to charge the fuel surcharge, when applicable (See Section 6.5, *Opportunity Buys*).

#### 6.27 Standard Packaging

Orders are to be drawn in quantities consistent with the industry standard as well as Executive Order 4 requirements as described in Section 3.11, *Executive Order 4 Approved Specifications for Food Services*, Section 3.11.1, *Food Service Containers and Wrappers*, and Section 3.11.2, *Single Use Food Service Utensils*. EXCEPTION: See Section 6.3.10, *Packaging/Container Security Requirements for Selected Authorized Users*.

#### 6.28 Discrepancies

OGS or the Authorized User must notify Contractor of all order and/or invoice discrepancies within five business days from receipt. Contractor shall take all commercially reasonable steps to resolve discrepancies (e.g., shortages etc.) within five (5) business days.

#### 6.29 Product Lead Time

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

#### 6.30 Product Returns and Exchanges

In addition to the provisions of Appendix B, *Title and Risk of Loss*, *Product Substitution*, and *Rejected Product*, Products returned or exchanged due to quality problems, duplicated shipments, outdated Product, incorrect Product shipped, Contractor errors otherwise not specified, or Products returned or exchanged due to Authorized User errors, shall be replaced with specified Products or the Authorized User shall be credited or refunded for the full purchase price.

Products shall be replaced within 10 business days of written notification to the Contractor of the Authorized User's intent to return or exchange the Product. Contractor can charge only a restocking fee for Product returned or exchanged due to Authorized User error that is determined not to be suitable for resale; the restocking fee cannot exceed the net price of the returned or exchanged Product.

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

#### 6.31 Contract Administration

The Bidder shall provide a sufficient number of Customer Service employees who are knowledgeable and responsive to Authorized User needs and who can effectively service the Contract. Bidder shall also provide an Emergency Contact in the event of an emergency occurring after business hours or on weekend/holidays.

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

### 6.32 NYS Financial System (SFS)

New York State is currently operating on an Enterprise Resource Planning (ERP) system, Oracle PeopleSoft software, referred to as the Statewide Financial System (SFS). SFS is currently on PeopleSoft Financials version 9.2. SFS supports requisition-to-payment processing and financial management functions.

The State is also implementing an eProcurement application that supports the requisitioning process for State Agencies to procure Products in SFS. This application provides catalog capabilities. Contractors with Centralized Contracts have the ability to provide a “hosted” or “punch-out” catalog that integrates with SFS and is available to Authorized Users via a centralized eMarketplace website. Additional information may be found at: <https://ogs.ny.gov/procurement/emarketplace>

There are no fees required for a Contractor's participation in the catalog site development or management. Upon completion and activation of an on-line catalog, State Agencies will process their orders through the SFS functionality and other Authorized Users can access the catalog site to fulfill orders directly.

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

### 6.33 Americans with Disabilities Act (ADA)

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

### 6.34 N.Y. State Finance Law § 139-I

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

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

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

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

The certification required above can be found on Attachment 2 – NYS Required Certifications, which Bidder must submit with its bid.

### 6.35 Insurance

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

### 6.36 Reporting

#### 6.36.1 Contract Usage

Contractor shall submit Attachment 8 – *Report of Contract Usage* including total sales to Authorized Users of this Contract by Contractor, and all authorized resellers, dealers and distributors, if any, *no later than 15 days of the following month starting with the first calendar quarter after Contract inception*. If the Contract period begins or ends in a fractional portion of a reporting period, only the actual Contract sales for this fractional period should be included in the quarterly report.

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

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

#### 6.36.2 Allowance Reports

Additionally, an Allowance Report shall be furnished to OGS every quarter in accordance with Section 6.37, *Audit Reporting*. The report shall include all the above-defined applicable allowances, discounts, and special negotiated pricing agreements for New York State. The report must contain the Product, description stock number of Product, the terms of the agreement and the amount of the allowance. Any change to any allowance, discount or special negotiated pricing agreement shall be reported to OGS at the time of the report.

Additional related sales information may be required by OGS and must be supplied upon request.

### 6.37 Audit Reporting

The State (or the State's designee) shall have the right to verify and audit Supplier Costs, billings, agreements, allowances, promotions, discounts, and rebates as identified above in Section 6.3, *Price*, and its subsections. OGS reserves the right to contact Contractor's supplier(s) and request prices charged to Contractor for specific items.

Contractor shall issue refunds, credits for sums due as a result of any overcharges, incorrect billings, incorrect payments, improperly retained applicable allowances etc. to the Authorized User or as designated by OGS. The following requirements are not intended to be restrictive; the State reserves the right to expand or diminish audit requirements as it deems proper and necessary to preserve the integrity of the Contract. The number of Products involved and the frequency of requests may be modified for both the bid evaluation and Contract audits.

The State further reserves the right to require Contractor to seek alternate pricing from independent suppliers if an OGS audit determines that the Related Party is not providing the most competitive pricing available in the market.

### 6.38 Contractor Cost Verification

The State shall also have the right to verify costs, allowances, incoming freight, billings, etc. Failure of Contractor to provide requested information or to provide their supplier(s) verification of invoice(s), etc., (when requested) to

the State within fourteen (14) calendar days may be the basis to cancel the Contract, request a responsibility hearing or initiate other appropriate action.

#### 6.39 Administrative Fee

In order to assist with the cost of administering and auditing for Contract compliance, the Contractor must return to OGS, in the form of a business check or money order, a fee of 1/4 percent (.0025) of the total sales during each quarter, to be paid no later than thirty (30) calendar days after each calendar quarter. Included with the payment, Contractor must provide a statement listing each invoice on which the fee is based. The State may make use of any available Contracts for auditing purposes.

#### 6.40 Performance Surveys

Contractor shall be required, upon request, to provide performance surveys to Authorized Users. Contract performance measures may include, but not be limited to, the following: delivery time, fill rate, response time to inquiries, resolution of problems, employee courtesy, and staff knowledgeability. The information reported on the surveys will be used to assess Contractor's performance and may, if necessary, be used to determine continuation or cancellation of award.

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

##### I. New York State Law

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

##### II. General Provisions

- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 ("MWBE Regulations") for all State Contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for MWBEs. Contractor's demonstration of "good faith efforts" pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, State, or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, a finding of non-responsibility, breach of Contract, withholding of funds, suspension or termination of the Contract, and/or such other actions or enforcement proceedings as allowed by the Contract and applicable law.

##### III. Equal Employment Opportunity (EEO)

- A. The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to all

Contractors, and any subcontractors, awarded a subcontract over \$25,000 for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to, the contracting State agency (the "Work") except where the Work is for the beneficial use of the Contractor.

1. Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate, or distinct from the Contract; or (ii) employment outside New York State.
  2. By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor's equal employment opportunity policy. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.
- B. Form EEO 100 – Staffing Plan
- To ensure compliance with this section, the Contractor agrees to submit, or has submitted with the Bid, a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.
- C. Form EEO - 101 - Workforce Utilization Reporting Form (Commodities and Services) ("Form EEO-101-Commodities and Services")
1. The Contractor shall submit, and shall require each of its subcontractors to submit, a Form EEO-101-Commodities and Services to OGS to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Form EEO-101-Commodities and Services must be submitted electronically to OGS at EEO\_CentCon@ogs.ny.gov on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January.
  2. Separate forms shall be completed by Contractor and all subcontractors.
  3. In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.
- D. Contractor shall comply with the provisions of the Human Rights Law and all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal and conviction and prior arrest.

#### IV. Contract Goals

- A. For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers, or suppliers to Contractor. Contractor is, however, encouraged to make every good faith

effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

B. Good Faith Efforts

Pursuant to 5 NYCRR § 142.8, evidence of good faith efforts shall include, but not be limited to, the following:

1. A list of the general circulation, trade, and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers, copies of such solicitations, and any responses thereto.
2. A list of the certified MWBEs appearing in the Empire State Development ("ESD") MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with, or obtaining supplies from, certified MWBEs.
4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
5. Dates of any pre-bid, pre-award, or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
6. Other information deemed relevant to the request.

V. Fraud

Any suspicion of fraud, waste, or abuse involving the contracting or certification of MWBEs shall be immediately reported to ESD's Division of Minority and Women's Business Development at (855) 373-4692.

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

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

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"), thereby further integrating such businesses into New York State's economy. OGS recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of OGS Contracts.

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

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

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

#### 6.43 Use of Recycled or Remanufactured Materials

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

#### 6.44 Bulk Delivery and Alternate Packaging

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

#### 6.45 Environmental Attributes and NYS Executive Order Number 4

New York State is committed to environmental sustainability and endeavors to procure Products with reduced environmental impact. One example of this commitment may be found in Executive Order No. 4 (Establishing a State Green Procurement and Agency Sustainability Program), which imposes certain requirements on State Agencies, authorities, and public benefit corporations when procuring Products. More information on Executive Order No. 4, including specifications for offerings covered by this Contract, may be found at <https://ogs.ny.gov/greenny/>. State entities subject to Executive Order No. 4 are advised to become familiar with the specifications that have been developed in accordance with the Order, and to incorporate them, as applicable, when making purchases under this Contract.

#### 6.46 Consumer Products Containing Mercury

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

#### 6.47 Diesel Emission Reduction Act

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

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



#### 6.48 Overlapping Contract Products

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

#### 6.49 Preferred Source Products

Section 162 of the State Finance Law requires that Authorized Users afford first priority to the Products of Preferred Source suppliers such as Corcraft (the marketplace name for the NYS Department of Corrections and Community Supervision, Division of Industries), New York State Preferred Source Program for People who are Blind (NYSPPSP), and New York State Industries for the Disabled (NYSID), and others determined by law, when such Products meet the form, function and utility of the Authorized User. Some Products in the resultant Contract may be available from one or more Preferred Sources. An Authorized User must determine if a particular Product is approved for a Preferred Source and follow the requirements of State Finance Law § 162(3) or (4)(b), respectively, before engaging the Contractor.

#### 6.50 NYS Vendor Responsibility

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

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

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

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

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

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

The Commissioner of OGS, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of

such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of OGS issues a written notice authorizing a resumption of performance under the Contract.

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

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

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

#### 6.51 NYS Tax Law Section 5-a

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

A Contractor is required to file the completed and notarized Form ST-220-CA with the Bid to OGS certifying that the Contractor filed the ST-220-TD with DTF. Only the Form ST-220-CA is required to be filed with OGS. The ST-220-CA can be found at [https://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](https://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf). The ST-220-TD can be found at [https://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](https://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf). Contractor should complete and return the certification forms within five (5) business days of request (if the forms are not completed and returned with Bid submission). Failure to make either of these filings may render a Contractor non-responsive and non-responsible. Contractor shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law. The ST-220-TD only needs to be filed once with DTF, unless the information changes for the Contractor, its affiliates, or its Subcontractors.

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

#### 6.52 "OGS or Less" Guidelines

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

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

### 6.53 Non-State Agencies Participation in Centralized Contracts

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

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

### 6.54 Extension of Use

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

### 6.55 New Accounts

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

### 6.56 Drug and Alcohol Use Prohibited

For reasons of safety and public policy, in any Contract resulting from this Solicitation, the use of alcoholic beverages or illegal drugs by the Contractor's personnel shall not be permitted in performance of the Contract.

### 6.57 Traffic Infractions

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

### 6.58 Re-Weighing Product

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