INVITATION FOR BID (IFB) 2388

FOR

WAREHOUSING & DISTRIBUTION (DELIVERY) SERVICES OF USDA DONATED FOOD COMMODITIES REGION L – COUNTIES OF:

CAYUGA, ONONDAGA, ONTARIO, SENECA, WAYNE, AND YATES

ISSUE DATE: October 7, 2020

BID DUE DATE: November 19, 2020 at 2:00 pm EST

Designated Contact:

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1. Introduction

1.1 Overview

The Office of General Services, Division of Food Distribution, through this solicitation, seeks a vendor to provide Warehousing and Distribution (delivery) of United States Department of Agriculture (USDA) food commodities in Region L – which includes the counties of: Cayuga, Onondaga, Ontario, Seneca, Wayne, and Yates.

The vendor(s) would receive and deliver federally procured foods from dry, chilled, and frozen environments to approximately 60 recipient agencies.

Any planned use of subcontractors, for warehousing or delivery, must be disclosed in detail when submitting your bid. If a subcontractor is being used for warehousing, the location of the warehouse(s) must be disclosed as well.

1.2 Designated Contact

In compliance with the Procurement Lobbying Law, Dan Schenkman, NYS Office of General Services, Division of Financial Administration, has been designated as the PRIMARY contact for this procurement solicitation and may be reached by email or voice for all inquiries regarding this solicitation.

Dan Schenkman, Contract Management Specialist 1
NYS Office of General Services
Financial Administration – Agency Procurement Office
Corning Tower, 32nd Floor, ESP
Albany, NY 12242
Voice: 1-518-474-4642
Email: Daniel.Schenkman@ogs.ny.gov

In the event the designated contact is not available, the alternate designated contacts are:

Paige Corning, Contract Management Specialist 2
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Albany, New York 12242
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For inquires related **specifically** to Minority Women-Owned Business Enterprises (MWBE) provisions of this procurement solicitation, the designated contact is:

Lori Brodhead, Compliance Specialist 1
NYS Office of General Services
MWBE and Community Relations
Corning Tower, 29th Floor, ESP
Albany, NY 12242
Voice: (518) 486-6866

Email: Lori.Brodhead@ogs.ny.gov

For inquires related specifically to Service-Disabled Veteran Owned Businesses (SDVOB) provisions of this procurement solicitation, the designated contact is:

Anita Domanico Compliance Specialist I
NYS Office of General Services
Division of Service-Disabled Veterans' Business Development
Corning Tower, 32nd Floor, ESP
Albany, New York 12242
Voice: 1-518-474-2015
Email: Anita.Domanico@ogs.ny.gov

1.3 Key Events

The Table below outlines the schedule for important action dates.

Action	Date	Time
OGS Issues Invitation For Bid (IFB)	**October 7, 2020**	
Deadline for Submission of Bidder Questions	**October 29, 2020**	**2:00 pm**
OGS Issues Responses to Written Questions (estimated)	**November 4, 2020**	
Bid Due Date/ Bid Opening Date	**November 19, 2020**	**2:00 pm**
Contract Start Date	**July 1, 2021**	

1.4 Minimum Bidder Requirements

Bidders are advised that the State's intent is to ensure that only responsive, responsible, qualified and reliable contractors enter into a contract to perform the work as defined in this document.

The State considers the following qualifications to be a pre-requisite in order to be considered as a qualified bidder for purposes of the solicitation.

The following minimum requirements **must** be met by each bidder:

- Bidder's facility/facilities must be licensed for food storage by New York State Department of Agriculture and Markets and provide proof of such.
- Bidder must have a pest management system in place at their facility/facilities and provide proof of such.
- Bidder's facility/facilities must, at a minimum, have storage capacities as listed below for dry, chilled and frozen storage environments. Additionally, the storage capacity listed below must only be available for the commodities required by this solicitation:
  - 5,000 square feet of dry storage

- 1,000 square feet of chilled storage; and
- 5,000 square feet of frozen storage.

• Bidder's facility/facilities must be located in close proximity to the counties included in REGION L or provide proof of prior experience and ability to provide delivery services to each facility within REGION L.

The State of New York retains the right to request any additional information pertaining to the Contractor's ability, qualifications, and procedures used to accomplish all work under this contract, as it deems necessary to ensure safe and satisfactory work.

1.5 Glossary of Terms

"Issuing Office" shall mean the Office of General Services Division of Financial Administration.

"OSC" shall mean the New York State Office of the State Comptroller.

"Contractor" shall mean a successful company awarded a contract pursuant to this solicitation.

"Invitation for Bid" or "IFB" shall mean this document/solicitation.

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

"Commissioner" shall mean the Commissioner of General Services or duly authorized representative.

"Offeror" or "Bidder" shall mean any person, partnership, firm, corporation or other authorized entity submitting a bid to the State pursuant to this solicitation.

2. Scope of Work

2.1 Contract Service Requirements

A. The Contractor agrees to adhere to all State and Federal regulations, primarily 7 CFR Part 250 and all applicable program policies and instructions, in connection with the handling, storage and distribution of any commodities.

B. The Contractor agrees to accept, unload, remove, and place into storage in their facility/facilities, shipments of USDA Foods allocated by NYS OGS for distribution to eligible recipient agencies. Incoming USDA loads must be accepted for delivery at minimum, between 7:00 A.M and 2:00 P.M. Contractor may not charge USDA carrier any fees for the delivery of USDA Foods or further processed USDA Foods.

C. Contractor agrees to clearly mark each pallet of USDA Foods received for this account to ensure that these items are easily identified. This may include adding a label to the outside of each pallet.

D. USDA Foods begin arriving in the second half of August for the school year and April will typically be the last month USDA deliveries will be made. Deliveries to schools will begin in September and typically end in May with light “clean up” deliveries occurring in June. It is not NYS OGS’s intention to carry over any product during the summer months.

E. The Contractor agrees to immediately tally commodities being placed for unloading and storage and prepare any reports or tallies that are required by OGS and forward such reports and tallies promptly to OGS. Quantities and varieties of food can change without notice. If quantities of food rise beyond current estimates, the Contractor’s facility/facilities will be capable to store and handle all foods allocated to it. The State of New York bears no responsibility to the Contractor if quantities drop below current estimates as indicated on the Bid Proposal Form.

F. The Contractor agrees to physically segregate all USDA Foods. The Contractor must track all cases received by the pack date or best if used by date. These lots/products must be rotated on a first-in, first- out basis except in cases where the packaging date of the incoming shipment precedes that of earlier shipments. In such instances, the packaging date will determine order of distribution.

G. If a truck arrives at the facility/facilites and the arriving load was pre- scheduled with the Contractor by OGS, and the unloading of the trailer is delayed for an unreasonable amount of time causing the trucker to incur any additional costs, payment of said costs will be the sole responsibility of the Contractor.

H. The Contractor agrees to receipt for each load in the USDA web-based system within two calendar days of receiving the load.

- Food Distribution is working with a vendor to develop a web-based USDA Food Distribution Inventory Management System. Upon implementation of the new system, vendor must use the system to manage the inventory and distribution of food to schools.

I. The Contractor agrees to immediately notify OGS of any shortages, overages or damages on a delivery.

J. If the Contractor has separate facilities for dry storage and chilled/frozen storage, the initial drop must be to the cold/frozen storage facility as only one drop location is allowed. The dry commodities must then be transported to the dry storage facility in a timely manner and may not be keep at the cold/frozen storage facility for any length of time. The dry commodities will be delivered to the other facility at no additional cost.

K. At all times, the vendor is responsible to:

- maintain the food at proper temperature and humidity, with adequate air circulation; and
- maintain storage, management, and transportation of donated foods in a manner that properly safeguards them against theft, spoilage, damage or other loss.

L. The Contractor shall store such commodities in dry, chilled or frozen storage environments in accordance with the nature of the product, accepted practice and any instructions forwarded to the Contractor by NYS OGS with each advice of shipment (Bill of Lading). Storage environments should be maintained at the following temperatures:

a. Dry - between 50° F and 70° F

b. Cooler - between 32° F and 40° F

c. Freezer - 0° F.

NOTE: Daily freezer / refrigerator logs must be maintained to ensure product safety. Those commodities requiring refrigeration or frozen storage will be kept under protection of mechanical refrigeration. Quantities and varieties of food can change without notice.

M. The minimum square footage requirements are listed below:

a. 5,000 square feet of dry storage

b. 1,000 square feet of chilled storage

c. 5,000 square feet of frozen storage

N. The minimum square footage requirements (above) are based in part on the <u>estimated</u> annual per case volume of each of the storage environments listed below:

1. Dry - 25,000 cases
2. Chilled - 3,000 cases
3. Frozen - 25,000 cases

O. The Contractor shall deliver the commodities for OGS to designated recipient agencies. Each agency must sign for all commodities received. All cases will be allocated to a recipient agency, and thus all contents of each incoming truckload will be accounted for. The Contractor will be responsible for downloading the agency allocation breakdown for each incoming USDA load, utilizing a USDA web-based system.

See Attachment 2 for a list of current recipient agencies in REGION L. Please note that the list is subject to change during the term of the contract. Also, each recipient agency can have multiple delivery locations.

P. The Contractor must have an active high-speed Internet connection in order to utilize the USDA web-based system for reviewing and receipt of USDA Foods.

Q. The Contractor must provide all recipient agencies with a weekly electronic report of USDA Foods that are allocated to each agency and are therefore available to order. In addition, the Contractor must also provide OGS Food Distribution with a weekly electronic master list, which is to include the information for every agency.

R. The Contractor must generate delivery paperwork for recipient agency signature. A copy of signed paperwork is to be maintained by contractor and recipient agency.

2.2 Care of Commodities

A. The Contractor must exercise the highest degree of diligence to prevent loss or damage of such commodities due to fire, theft, infestation, or deterioration, or any other cause during the time when said commodities are stored in its facility or subject to the control of the Contractor.

B. Any loss of USDA Food must immediately be reported to NYS OGS Food Distribution. The Contractor may replace these items with an equal quality product to the recipient agency. Any replacement must be 100% domestic origin, no international substitutions will be allowed. Overages and shortages between physical inventory and book inventory shall be reconciled by the total value of such commodities. Reconciliation shall take place at the annual physical inventory with the Contractor providing any documentation of replacement items to assist in the offset process. Any overages continue to be the property of NYS OGS.

C. The Contractor shall obtain and provide copies to NYS OGS of all necessary licenses and permits. Additionally, Contractor shall maintain good care of warehouse premises, fixtures and appurtenances. The Contractor must comply with all laws, rules, orders, ordinances and regulations, which are applicable to the premises, of the borough, city, county, municipality, bureau or official board thereof (i.e.: Board of Fire Underwriters) having jurisdiction.

D. The Contractor must have, or agree to install and maintain, a heat or smoke activated fire alarm system with central station monitoring or a working sprinkler system.

E. The Contractor must have, or agree to install and maintain, accurate continuous recording temperature devices with attached charts. These charts are to be kept on file during the term of this contract and for six months following the end of the contract. Charts shall be available to NYS OGS for inspection at any time.

F. The Contractor shall keep the premises clean and protected from infestation at all times and maintain a passing score from NYS Department of Agriculture and Markets. Approved rodent bait traps must be installed and maintained and a chart of their location noting maintenance dates kept for visual inspection by NYS OGS. It is recommended that Integrated Pest Management (IPM) methods be utilized. Food products must be stacked no closer than 12" from any wall or partition and 6" from the floor.

G. The Contractor shall not leave any damaged product exposed in rooms where good product is stored. Floors must be swept and kept free of dust and debris. Cartons and bags must be free from dust or dirt.

H. The Contractor must have a current and active ‘food safety’ plan in place. USDA Foods may not be stored with chemicals or other products which may be harmful to the quality or safety of the Food or Commodities.

I. Contractor’s facility/facilities must have proper sanitation, construction, inventory control procedures and security. At any time NYS OGS can perform an on-site inspection to verify these requirements are met, subsequent to the contract award.

2.3 Damages

A. The Contractor shall examine each shipment for possible shortage or damage and shall immediately notify NYS OGS of any shortage or damage. In the case of shipments containing damaged or poor condition commodities not exceeding 50% of total load capacity, the Contractor shall immediately notify NYS OGS, by telephone, of gross damage, and shall proceed to take necessary steps to salvage such damaged commodities and shall, not more than five days thereafter, notify NYS OGS of net

damages. In the case of shipments containing damaged or poor condition commodities exceeding 50% of total load capacity, the Contractor shall immediately notify NYS OGS, by telephone, of the condition of such shipment but shall not unload or otherwise handle the same until instructions are received from NYS OGS. Commodities found unfit for human consumption shall be disposed of in accordance with specific instructions to be given in each case by NYS OGS. Contractor shall be responsible for the disposal of any defective product(s) by order of NYS OGS Division of Food Distribution as instructed.

B. It is understood and agreed that any cost incurred by the Contractor in connection with the disposition or salvage of damaged commodities shall be reimbursed by the delivering carrier or such other party as may be found to be responsible for the damage.

2.4 Deliveries

A. Contractor vehicles used for commodity distribution must be either:

1. Vans and/or trucks for delivery of dry items;
2. Dual compartment trucks for combined deliveries of dry items and refrigerated/frozen items; or
3. Single compartment refrigerated trucks (0º degrees Fahrenheit) for separate or integrated deliveries of dry items and refrigerated/frozen items.

B. The number of vehicles required will depend on the size and functionality of the trucks used for distribution.

C. Deliveries to schools shall be made twice each month, between the months of September through June. **All deliveries must be made Monday through Friday (excluding holidays) between the hours of 7:00 A.M and 2:00 P.M.**, unless special arrangements are made between the recipient and the Contractor.

A single delivery can be to multiple buildings within a school district. If a district has three buildings, then they can request two deliveries to each location twice per month. A breakdown of all current locations is attached as Attachment 2 but may be modified during the contract period.

Recipient agencies are required to provide a list of observed holidays and other closings to the Contractor. Contractors will deliver on the same day of each scheduled week, unless there is an emergency at which time the Contractor shall notify each recipient agency affected by the emergency and reschedule the delivery. Contractors are not allowed to charge for unscheduled deliveries which the recipient agency is unable to accept. An alternate delivery schedule can be used, if written consent exists between both the Contractor and the recipient agency.

Please note that if multiple drops are made within the same school campus, this will be considered to be one drop for the purposes of billing.

D. No “case minimum delivery order” shall be applied to this contract.

E. The Contractor must review, verify and enter all incoming loads on USDA’s web-based system. Should the Contractor, for any reason, be unable to store any or all of a commodity scheduled for delivery, Contractor shall notify OGS as soon as a potential problem is known to exist.

F. It is agreed by the Contractor that upon receiving a load of USDA Food, the Contractor will promptly store such commodities in its warehouse and will electronically receive each shipment utilizing the USDA web-based system within two calendar days of receiving the load. Any discrepancies in amounts of commodities received and amounts shown on notices of shipment must be noted in the USDA web-based system.

G. The Contractor will be responsible for any charges for detention / demurrage or other charges which may accrue after a truck has been placed for unloading by order of OGS. If the Contractor omits an item(s) in error, the item(s) can be included in the school's next scheduled delivery, but only if the school agrees. If the school does not agree to wait for their next scheduled delivery, the Contractor has three working days to deliver the omitted item(s), at no additional charge.

H. Drivers and/or helpers shall deliver merchandise to designated staging areas at each delivery site. Drivers and/or helpers shall not be required to place merchandise in holding rooms, cabinets, coolers, or freezers. Drivers and/or helpers shall request the authorized school receiver, or the designated representative to verify the accuracy of items, quantities of each item, total quantities, and condition of merchandise. Each delivery ticket/slip must be signed and accepted by a designated school receiver and one copy left at the school. The designated school receiver shall note shortages, damages, etc. on each ticket/slip. The recipient agency must provide signed withdrawal orders for any commodities received.

I. Contractors may deliver donated foods in straight loads containing only donated foods or in mixed loads with other commercially purchased items, as long as the other terms of this contract are satisfied.

J. USDA Foods may not be delivered with chemicals or other products which may be harmful to the quality or safety of the Food.

2.5 Commodity Holds and Recalls

Periodically, the USDA may announce that a particular commodity must be placed on "Hold". In more serious situations, the USDA may actually "Recall" the product. If a commodity "Recall" occurs, OGS retains the authority to contact the Contractor and direct that a particular commodity be disposed of. It is expressly understood that the disposal process may in many cases cause the Contractor to incur charges. In these cases, OGS will work on behalf of the Contractor to seek full reimbursement of said charges from the USDA. Although OGS would react timely on behalf of the Contractor, it could be several months before the Contractor will receive their reimbursement. In addition, OGS can only seek a reimbursement when the Contractor can provide documented proof that disposal charges were incurred.

2.6 Emergency Services

Contractor must be available on a 24 hour, 7 days a week basis to respond to an emergency call within one hour and be readily available off hours to accommodate USDA retrieval of donated foods from the contractor's warehouse in the event of an emergency. For example, an emergency call from OGS may be executed during a State of Emergency where locally stored USDA Foods are required in emergency situations (i.e., Hurricane Sandy).

2.7 Staffing Expectations

The Office of General Services expects that all services will be conducted diligently and effectively under the oversight of OGS staff. Further, it is expected that:

1. All Contractor's staff shall conduct themselves in a professional manner with OGS staff and with the general public.
2. All Contractor's staff shall comply with all rules and requirements of this contract, including the drug and alcohol policies (Refer to Section 5.5 – General Requirements).

2.8 Administrative and Reporting Requirements

The Contractor will be responsible for the completion of a variety of administrative and reporting requirements, at no additional cost to OGS. The Contactor shall provide OGS with a monthly inventory taken from the warehouse records. Such reports shall be submitted within five days after the close of business for that month to OGSDonatedFoods@ogs.ny.gov .

A physical inventory shall be taken annually, or at any such time as determined by OGS. Contractor shall provide reasonable access to the commodities when physical inventories are conducted at no extra charge to OGS.

The Contractor shall maintain accurate records and accounts of all services rendered under this contract. Reports must provide the following information:

1. Provide all recipient agencies with a weekly electronic report of USDA Foods that are allocated to each agency and are therefore available to order. In addition, the Contractor must also provide OGS with a weekly electronic master list, which is to include the information for every agency.
2. Sales Orders received for the monthly reporting period:
    a. Beginning inventory by material;
    b. Total received by material;
    c. Total distributed by material;
    d. Adjustments;
    e. Ending Inventory by Material.
3. List the distribution of Sales Orders to Recipients;
4. List the deliveries to Recipients by:
    a. Recipient;
    b. Delivered by stop / location.

During the term of this contract, the Contractor shall maintain a designated officer or employee as its representative for contact with the State and for all communication and transactions relating to this contract.

The Commissioner's designated representative for all purposes of this contract shall be the Director of the Division of Food Distribution for the Office of General Services.

2.9 OHSA (Occupational Safety & Health Administration) Training Requirements

2.9.1 OGS Facility Manager's Obligations

Prior to beginning contract work/work assignment, the OGS Facility Manager or Designee shall inform or make available the Contractor/Contractor's representative(s) of the known specific hazard(s) and chemical(s) they may encounter while performing their contract obligations. For example; testing of materials may be performed or previous reports may be available to inform on the location of Asbestos Containing Materials, lead or other environmental concerns if present, and any site-specific work practices that may be necessary to conduct work safely and in compliance with federal or state standards and OGS procedures such as those involving Lockout/Tagout and electrical procedures.

The Contractor/Contractor's Representative(s) shall also be provided with information about the use and provisions for Personal Protective Equipment required for the work.

Contractor/Contractor's Representative shall provide a signed acknowledgement to the OGS Facility Manager or OGS Designee that they were provided with this information.

2.9.2 Contractor / Contract Employee Obligations

A. General Contract Obligations:

Prior to or upon first reporting to the work location for assignment, the Contractor/Contractor employee(s) and employees of Sub-Contractors must present to the OGS Facility Manager or OGS Designee proof of completion of the OSHA required training for the following, topic areas including but not limited to:

1) Hazard Communication,

2) Personal Protective Equipment.

For environmental health and safety emergencies, an emergency contact must be provided for the facility manager or designee to contact prior to any work commencing. Any changes to this contact, including name and or contact information must be communicated to the OGS Designee immediately.

B. Specific Field-of-Work Requirements:

In circumstances where specific OSHA or NYS Department of Labor regulated work is required, the Contractor/Contract Employee(s) shall have all pertinent and up-to-date certifications beyond the "awareness" level as required by regulations for the specific work. Onsite employee will be trained to do the work, supervised by higher knowledge/training,

It is the Contractor's responsibility to provide the OGS Facility Manager or OGS Designee with all employee updates and/or renewals for the above general contract obligations and specific field of work requirements specified training.

The Contractor must coordinate with OGS to be informed of the site's Emergency Action Plan.

Note: Contractor's/Contractor's Employee(s) and employees of Sub-Contractors failure to provide such documentation to the OGS Facility Manager or OGS Designee upon or prior to employee reporting to their initial work assignment may result in OGS rejecting the employee(s) until that documentation is provided.

2.10 Warrantees

Contractor warrants that the services acquired under this Contract will be provided in a professional and workmanlike manner in accordance with industry standards.

All materials and workmanship provided under this contract shall be warranted for a minimum of one year. Where Contractor, product manufacturer or service provider generally offers additional or more advantageous warranties, such additional or more advantageous warranty shall apply. All warranties contained in this Contract shall survive the termination of this Contract.

3. Bid Submission

3.1 IFB Questions and Clarifications

Questions and requests for clarification regarding this IFB# 2388 shall only be directed to:

Dan Schenkman, Contract Management Specialist 1
OGS Division of Financial Administration
Corning Tower, 32nd Floor, ESP
Albany, NY 12242
Phone: 1-518-474-4642
E-mail: daniel.schenkman@ogs.ny.gov

All questions must cite the particular page, section, and paragraph number, where applicable. Please submit questions as early as possible following receipt of the solicitation. The final deadline for submission of any questions/clarifications regarding this solicitation is listed in Section 1.3 – Key Events. Questions received after the deadline may not be answered. OGS will distribute an addendum with all Questions and Responses to Questions via email on or about the date listed in Section 1.3 – Key Events, to the Primary Contact Person for all vendors that have submitted a complete bid.

3.2 Bid Format and Content

In order for the State to evaluate bids fairly and completely, bidders are encouraged to follow the format set forth herein and should provide all of the information requested. All items identified in the following list should be addressed as concisely as possible in order for a bid to be considered complete. Failure to conform to the stated requirements may necessitate rejection of the bid.

Bidders may be requested to provide clarification based on the State's evaluation procedure. Any clarification will be considered a formal part of the Bidder's original proposal. If further clarification is needed during the evaluation period, OGS will contact the Bidder.

Note: OGS reserves the right to request any additional information deemed necessary to ensure that the bidder is able to fulfill the requirements of the contract.

A. **Cover Letter:** The cover letter should confirm that the bidder understands all the terms and conditions contained in this IFB and will comply with all the provisions of this IFB. Further, that should the contract be awarded to your company, you would be prepared to begin services on the date indicated in Section 1.3 - Key Events. The cover letter should also include the full contact information of the Bidder's Representative that OGS shall contact regarding the bid. A bidder representative authorized to make contractual obligations must sign the cover letter. The letter should also state whether or not subcontractors will be used, and the name and address of each proposed subcontractor.

B. **Minimum Qualifications:** Bidders must submit information to confirm their ability to meet the minimum qualifications to provide the services requested in this IFB# 2388 as set forth in Section 1.4 – Minimum Bidder Requirements.

C. **Location of Facility/Facilities:** Bidders are requested to submit information on the location(s) where each commodity will be stored/shipped to and from. Bidder must also indicate if subcontractors will be used and for what purpose (i.e. warehousing and/or distribution).

D. **Pricing:** Bidders must submit a completed Bid Proposal Form (Attachment 1). Each item must be complete with no lines omitted. Bidder shall not provide alternative pricing or deviate from the Cost Proposal Form. Alternative pricing methodologies will not be considered and may result in the rejection of the bid.

E. **Administrative Submission:**

1. All required completed forms from IFB Appendix B
2. Signed bid addenda (if any)
3. Important Notes:
   a. Insurance – Bidders are reminded of the insurance requirements as described in Appendix D. The selected Bidder will be required to provide all necessary documentation upon notification of selection.
   b. M/WBE & EEO Requirements- Bidders are reminded of the requirements as described in Appendix E.
   c. Vendor Responsibility - Bidders are reminded of the requirement as described in Section 5.13 and are requested to complete the online questionnaire located on the OSC VendRep System website prior to bid submission. If the vendor has previously certified responsibility online, it shall ensure that the VRQ was recertified in the last 6 months.
   d. Document Consistency - An award will only be made to the entity that has submitted the bid. All submitted documents must be consistent with the official name of the bidding entity, FEIN and NYS Vendor ID number.

3.3 Bid Preparation

All bids must be completed in ink or machine produced. Bids submitted handwritten in pencil will be disqualified.

3.4 Packaging of IFB Response

Please submit:

A. One original of the Bid Proposal Form (Attachment 1)

B. One original of: Cover Letter; Minimum Qualifications information, Location of Facility/Facilities information

C. One original of the Administrative Submission

D. One Digital copy (CD or thumb drive) of cover letter, minimum qualifications information, bid proposal form and administrative submission. If there are any differences between the paper submission and the electronic submission, the paper submission shall take precedence.

All bid documents must be submitted by mail, hand delivery, overnight carrier or certified mail in a package showing the following information on the outside:

A. Bidder’s complete name and address

B. Solicitation Number: IFB #2388

C. Bid Due Date and Time: (as in Section 1.3 - Key Events)

D. Bid for: Warehousing and Distribution (delivery) of United States Department of Agriculture (USDA) food commodities in Region L.

Failure to complete all information on the bid envelope and/or packages may necessitate the premature opening of the bid and may compromise confidentiality.

3.5 Instructions for Bid Submission

Note that these instructions supersede the generic instructions posted on the OGS website bid calendar.

Only those Bidders who furnish all required information and meet the mandatory requirements will be considered.

Submit all required bid documents to the NYS Office of General Services - Division of Financial Administration at the following address:

OGS Financial Administration, Agency Procurement Office
Empire State Plaza, Corning Tower, 32nd Floor
Albany, NY 12242
Attn: Dan Schenkman
Bid #2388

E-MAIL OR FAX BID SUBMISSIONS ARE NOT ACCEPTABLE AND WILL NOT BE CONSIDERED.

The State of New York will not be held liable for any cost incurred by the Bidder for work performed in the preparation and production of a bid or for any work performed prior to the formal execution and approval of a contract.

Bids must be received in the above office on or before 2:00 PM on the date indicated in Section 1.3 Key Events. Bidders assume all risks for timely, properly submitted deliveries. Proposers mailing their bid must allow sufficient mail delivery time to ensure receipt of their bid at the specified location no later than the specified date and time.

The received time of bids will be determined by the clock at the above noted location.

Any Bid received at the designated location after the established time will be considered a Late Bid. A Late Bid may be rejected and disqualified from award. Notwithstanding the foregoing, a Late Bid may be accepted in the Commissioner's sole discretion where (i) no timely Bids meeting the requirements of the Solicitation are received, or (ii) the Bidder has demonstrated to the satisfaction of the Commissioner that the Late Bid was caused solely by factors outside the control of the Bidder. However, in no event will the Commissioner be under any obligation to accept a Late Bid.

The basis for any determination to accept a Late Bid shall be documented in the procurement record

Bids must remain open and valid for 120 days from the due date, unless the time for awarding the contract is extended by mutual consent of NYS OGS and the Bidder. A bid shall continue to remain an effective offer, firm and irrevocable, subsequent to such 90-day period until either tentative award of the contract(s) by issuing Office is made or withdrawal of the bid in writing by Bidder. Tentative award of the contract(s) shall consist of written notice to that effect by the issuing Office to the successful Bidder. This solicitation remains the property of the State at all times, and all responses to this solicitation, once delivered, become the property of the State.

Important Building Access Procedures for Delivered Bids:

Building Access procedures are in effect at the Corning Tower. Photo identification is required. All visitors must register for building access, for delivering bids. **Vendors are encouraged to pre-register by contacting the OGS Finance Office at 518-474-5981 at least 24 hours prior to arrival.** Pre-registered visitors are to report to the visitor desk located at the Concourse level of the Corning Tower. Upon presentation of appropriate photo identification, the visitor will be allowed access to the building.

Upon arrival at the visitor desk, visitors that have not pre-registered will be directed to a designated phone to call the OGS Finance Office. The Finance Office will then enter the visitor's information into the building access system. Access will not be allowed until the system has been updated. Visitors are encouraged to pre-register to ensure timely access to the building. Vendors who intend to deliver bids or conduct business with OGS should allow extra time to comply with these procedures. These procedures may change or be modified at any time.

NOTE: Currently, due to the COVID pandemic, visitors are not allowed into the Corning Tower. Bids may still be hand delivered with drop-off to a Division of Financial Administration employee taking place at the Security Desk in the lobby of the tower.

Visitor parking information can be viewed at the following OGS web site:

https://empirestateplaza.ny.gov/system/files/documents/2018/08/visitorlots.pdf

3.6 Examination of Contract Documents

1. Each Bidder is under an affirmative duty to inform itself by personal examination of the specifications of the proposed work and by such other means as it may select, of the character, quality and extent of the work to be performed and the conditions under which the contract is to be executed.
2. Each Bidder shall examine specifications and all other data or instruction pertaining to the work. No pleas of ignorance of conditions that may be encountered or of any other matter concerning the work to be performed in the execution of the contract will be accepted by the state as an excuse for any failure or omission on the part of the Bidder to fulfill every detail of all the requirements of the documents governing the work. The Bidder, if awarded the contract, will not be allowed any extra compensation by reason of any matter or thing concerning which such Bidder might have fully informed itself prior to bidding.
3. Any Bidder in doubt as to the true meaning of any part of the specification or the proposed contract documents shall submit to Dan Schenkman, Division of Financial Administration, 32nd Floor, Corning Tower Building, Empire State Plaza, Albany, New York 12242 or e-mail: Daniel.Schenkman@ogs.ny.gov a written request for an interpretation thereof. If a major change is involved to which all Bidders must be informed, such request for interpretation shall be delivered, in writing, no later than question due date listed in **Section 1.3- Key Events.** Any interpretation of the proposed documents will be made only by an addendum duly issued.
4. Any addendum issued prior to the bid due date must be acknowledged by signature, dated and be submitted on or before the bid due date with four originals. In awarding a contract, any addenda will become a part thereof.
5. Any verbal information obtained from, or statements made by, representatives of the Commissioner of General Services at the time of examination of the documents, pre-bid conference, or site visit shall not be construed as in any way amending contract documents. Only such corrections or addenda as are issued, in writing, to all Bidders shall become a part of the contract.

4. Administrative Information

4.1 Issuing Office

This solicitation is being released by the New York State Office of General Services (OGS), Division of Financial Administration, on behalf of OGS Food Distribution.

4.2 Method of Award

OGS intends to award one contract to the lowest responsive and responsible bidder. The lowest bidder shall be determined by the Grand Total Bid as represented on the Bid Proposal Form (Attachment 1).

The total bid consists of the following components:

A. Cost per case of food received, stored, and delivered; and

B. Storage cost per case for items exceeding 60 days.

The Contractor agrees to a complete on-site inspection by OGS Food Distribution personnel **in order to obtain an award**. The warehousing facility/facilities must be in good standing with all of the requirements contained in this solicitation and pass OGS inspection in order to receive an award. Please see Attachment 3 – Facility Inspection Form for inspection criteria.

Upon determination of the lowest responsive and responsible bidder, and a passing inspection of the warehousing facility/facilities, the sample Contract Service Agreement found in Appendix C hereto, which appendix is hereby incorporated by reference and made a part hereof as fully as if set forth at length herein, will be completed with the successful bidder's information and appended to this solicitation and the successful bidder's bid to form the contract between the parties that will be processed for all necessary State approvals.

The Grand Total Bid amount of the successful bidder shall be used to calculate the total contract value. The total contract value shall not be exceeded.

4.3 Price

The **Prices Bid** shall be inclusive of all costs including travel, licenses, insurance, administrative, and other ancillary costs. Details of service not explicitly stated in these specifications, but necessarily attendant thereto are deemed to be understood by the Contractor and included herein.

Bidders must submit pricing using the Bid Proposal Form (Attachment 1) contained in this document. Bidders must provide pricing for all items on the Bid Proposal Form. Any alterations, qualifiers, etc. will result in rejection.

The total bid consists of the following components:

Bid Form Item A – The case quantity breakouts provided (1 – 99 cases, 100 – 199 cases, and 200+ cases) represent the number of cases delivered per stop / location. Recipients may request deliveries twice per month per location. The price bid per case shall be inclusive of all product handling, storage (up to the first 60 days), and delivery. These charges shall be included on the invoice for the month in which delivery to recipient agency was made.

Bid Form Item B – The price bid per case shall be a per month charge for any product stored in excess of 60 days. This charge may recur each month (or portion thereof) for which a product is stored after the initial 60-day period.

The contractor agrees that from the effective date of the contract until contract termination, the rates charged by the contractor and paid for by OGS will be equal to or lower than any rates provided by the contractor to other customers for like services.

4.4 Early Payment Discount

If the Bidder offers an early payment discount for payments made in less than 30 days after receipt of a proper invoice, please detail the discount by providing, in the appropriate place on the Attachment 1 Bid Form, the percentage of discount and the specific number of days within which the payment must be made for the discount to apply. If Bidder offers multiple discounts, please provide the details for each discount offered (for example: 2%/15 days; 1%/20 days).

A discount for early payment does not affect bid amounts nor is it considered in making awards, except that a discount may be considered in resolving tie bids.

Note: The State is not liable for any cost incurred by a Bidder in the preparation and production of a bid or for any work performed prior to the issuance of a contract.

4.5 Term of Contract

This contract will commence on July 1, 2021 and will be in effect through June 30, 2026.

4.6 Price Adjustment (Escalation / De-escalation)

The Contractor is to submit a bid that will be fixed for one year only. On each anniversary date of the contract, the Contractor will be granted an increase or decrease in their bid, dependent upon fluctuations in the Consumer Price Index for All Items, Northeast Urban, as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212. Visit their website at http://www.bls.gov/data/ .

The 'base' month for determining adjustments will be the third month prior to the start date of the contract. The base month is fixed and will not be adjusted year to year. The adjustments will be based on the difference in the base month CPI for each applicable year and will become effective in the anniversary month. For example, if the contract is awarded in September 2019, the 'base' month will be June. If the contract allows for an adjustment after the first year, it would be based on the difference between the June 2019 CPI and the June 2020 CPI and become effective in September 2020. If the contract price is fixed for three years and allows an escalation thereafter, it would be based on the difference between the June 2021 CPI and the June 2022 CPI and become effective September 2022.

The Consumer Price Index is published around the middle of each month for the prior month (i.e. the January figure is not published until mid-February). The Contractor has the sole responsibility to request, in writing, a rate adjustment. This request must be received at the below address within three months of the base month. As long as the request is submitted and received within the required time frame, the adjustment will be processed using the base month Consumer Price Index. Once approved, the Contractor will be notified in writing. Contractor shall not submit revised invoices until such notification, at which point an invoice may be submitted for any retroactive difference owed.

Requests must be sent to:

NYS Office of General Services
Financial Administration, Agency Procurement Office
Corning Tower, 32nd Floor, Empire State Plaza,
Albany, New York 12242

Should a Contractor fail to submit their request, to the proper location, within three months of the applicable base month date, Contractor shall be deemed to have waived their right to any increase

in price, but the State shall not be barred from making the appropriate adjustment in the case of a decrease determined in accordance with the above methodology.

4.7 Method of Payment

Item A charges shall be included on the invoice for the month in which delivery to the recipient agency was made. Item B charges may recur each month (or portion thereof) for which a product is stored after the initial 60-day period. (Refer to Section 4.3 – Price)

Invoices will be processed in accordance with established procedures of the Office of General Services and the Office of the State Comptroller (OSC) and payments will be subject to the prompt payment provisions of Article XI-A of the New York State Finance Law.

Each company invoice **must** be itemized and include the following information: Name of NYS agency being billed; Contract ID number; Purchase Order number; Vendor name; Company FEIN; Vendor ID number; a unique invoice number; date(s) of service(s; a detailed description of services performed; and dollar amount requested in accordance with contract or PO rates.

Invoices without the above stated information will be returned to Contractor to be completed as required in the paragraph above. **Payment will not be issued and will not be due and owing until a corrected invoice is received and approved by OGS**.

All invoices must be submitted for payment to:

Office of General Services **-or-** accountspayable@ogs.ny.gov
C/O BSC / Accounts Payable
1220 Washington Ave., Bldg. 5, 5th FL
ALBANY, New York 12226

NOTE: **A copy of the invoice and reports must be forwarded to the Director for the Division of Food Distribution, Room 2978, Corning Tower, Empire State Plaza, Albany, NY 12242; ogsdonatedfoods@ogs,ny.gov**

4.8 Electronic Payment

Contractor shall provide complete and accurate billing invoices in order to receive payment. Billing invoices submitted must contain all information and supporting documentation required by the contract, the agency, and the State Comptroller. Payment for invoices submitted by the contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Information is available at the following website: http://www.sfs.ny.gov/index.php/vendors, by e-mail at Helpdesk@sfs.ny.gov, or by phone at 518-457-7717. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

Please note that in conjunction with New York State's implementation of a new Statewide financial system, the Office of the State Comptroller requires all vendors doing business with New York State agencies to complete a substitute W-9 form. Vendors registering for electronic payment can complete the W-9 form when they register. Vendors already registered for electronic payment are requested to go to the above website and complete the Substitute W-9 form and submit following the instructions provided.

4.9 Exceptions and Extraneous Terms

The Issuing Office will consider all requests to waive any solicitation requirement. The Term "solicitation requirement" as used herein shall include any and all terms and conditions included in the solicitation documents. Bidders should be aware that failure to obtain a waiver of any proposal requirement in advance of bid submission, and/or inclusion of extraneous terms in the form of exceptions, assumptions, qualifiers, ranges, modifications, etc. with bid submission, may result in rejection of Bidder's proposal and disqualification from the bidding process.

Bidders wishing to obtain an exemption or waiver for any part of this solicitation must contact the Issuing Office in writing by the 'Questions Due Date' as identified in Key Events (Section 1.3). The request must cite the specific section and requirement in question, and clearly identify any proposed alternative. Requests will be considered and responded to in writing, either with the 'Answers to Questions' as identified in Key Events (if the response results in a change to the solicitation), or directly to the requesting vendor.

4.10 Dispute Resolution

It is the policy of the Office of General Services' Financial Administration to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to proposal solicitations, contract awards, and contract administration. OGS Financial Administration encourages vendors to seek resolution of disputes informally, through consultation with OGS Financial Administration staff, prior to commencing a formal dispute process. All such matters will be accorded full, impartial and timely consideration. A copy of the OGS Financial Administration Dispute Resolution Procedures for Vendors may be obtained by contacting the designated contact person identified in the solicitation.

During the term of the contract, if either party notifies the other of a dispute or dissatisfaction, the other party will make a good faith effort to solve or settle dispute amicably, including meeting with the other party to diligently attempt to reach a satisfactory result. In the event of a dispute, the parties will continue to fulfill their obligations hereunder during the dispute resolution process. The parties agree to proceed in good faith to avoid disputes and resolve disputes that cannot be avoided at the lowest level possible. If party representatives are unable to resolve the dispute or reach a satisfactory result within twenty days of written notice of a dispute, the dispute will be referred to successive higher levels of each organization for final decision.

4.11 Inspection of Books

It is expressly understood and agreed that the Office of General Services and the New York State Comptroller shall have the right to inspect and audit the Contractor's records covered under this Agreement, in accordance with his statutory responsibility to examine the books and accounts of every Agency. The New York State Comptroller requires, and the Contractor agrees to, the retention of all material that is pertinent to an audit of the operations under any contract resulting from this solicitation for a full six-year period.

4.12 Rules of Construction

Words of the masculine and feminine genders shall be deemed and construed to include the neuter gender. Unless the context otherwise indicates, a singular word shall include the plural and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons. The terms "hereby," "hereof," "hereto," "herein," "hereunder," and any similar terms, as used in this solicitation, refer to this solicitation.

5. Contract Clauses and Requirements

5.1 Appendix A / Order of Precedence

Appendix A — Standard Clauses for New York State Contracts, dated October 2019 attached hereto, is hereby expressly made a part of this solicitation document as fully as if set forth at length herein.

The agreement resulting from a successful award will include the following documents. Conflicts between these documents will be resolved in the following descending order of precedence:

1. Appendix A
2. Contract Service Agreement (Appendix C)
3. OGS Invitation for Bid #2388 (this document) with any addendum(a)
4. Selected Contractor's Bid

5.2 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 Vendor during the procurement process. A Vendor 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, is identified on the first page and in Section 2.1. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Vendor pursuant to these two statutes. 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 Vendor is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the OGS website: http://www.ogs.ny.gov/acpl/

5.3 Tax and Finance Clause

TAX LAW § 5-A:

Section 5-a of the Tax Law, as amended, effective April 26, 2006, requires certain contractors awarded state contracts for commodities, services and technology valued at more than $100,000 to certify to the 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 are 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.

This law imposes upon certain contractors the obligation to certify whether or not the contractor, its affiliates, and its subcontractors are required to register to collect state sales and compensating use tax and contractors must certify to DTF that each affiliate and subcontractor exceeding such sales threshold is registered with DTF to collect New York State and local sales and compensating use taxes. The law prohibits the State Comptroller, or other approving agency, from approving a contract awarded to a contractor meeting the registration requirements but who is not so registered in accordance with the law.

Contractor certification forms and instructions for completing the forms are attached to this solicitation. Form ST-220-TD must be filed with and returned directly to DTF. Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the contractor, its affiliate(s), or its subcontractor(s) a new Form ST-220-TD must be filed with DTF.

Form ST-220-CA must be filed with the bid and submitted to the procuring covered agency certifying that the contractor filed the ST-220-TD with DTF. Proposed contractors should complete and return the certification forms within two 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 Bidder non-responsive and non-responsible. Bidders shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Vendors may call DTF at **1-800-698--2909** for any and all questions relating to Section 5-(a) of the Tax Law and relating to a company's registration status with the DTF. For additional information and frequently asked questions, please refer to the DTF web site:

https://www.tax.ny.gov

5.4 Freedom of Information Law / Trade Secrets

During the evaluation process, the content of each bid/proposal will be held in confidence and details of any bid/proposal will not be revealed (except as may be required under the Freedom of Information Law or other State law). The Freedom of Information Law provides for an exemption from disclosure for trade secrets or information the disclosure of which would cause injury to the competitive position of commercial enterprises. This exception would be effective both during and after the evaluation process.

SHOULD YOU FEEL YOUR FIRM'S BID/PROPOSAL CONTAINS ANY SUCH TRADE SECRETS OR OTHER CONFIDENTIAL OR PROPRIETARY INFORMATION, YOU MUST SUBMIT A REQUEST TO EXCEPT SUCH INFORMATION FROM DISCLOSURE. SUCH REQUEST MUST BE IN WRITING, MUST STATE THE REASONS WHY THE INFORMATION SHOULD BE EXCEPTED FROM DISCLOSURE AND MUST BE PROVIDED AT THE TIME OF SUBMISSION OF THE SUBJECT INFORMATION. THIS CAN BE ACCOMPLISHED BY COMPLETION OF THE APPLICABLE QUESTION ON THE CONTRACTOR INFORMATION PAGE IN APPENDIX B HERETO. **REQUESTS FOR EXEMPTION OF THE ENTIRE CONTENTS OF A BID/PROPOSAL FROM DISCLOSURE HAVE GENERALLY NOT BEEN FOUND TO BE MERITORIOUS AND ARE DISCOURAGED. KINDLY LIMIT ANY REQUESTS FOR EXEMPTION OF INFORMATION FROM DISCLOSURE TO BONA FIDE TRADE SECRETS OR SPECIFIC INFORMATION, THE DISCLOSURE OF WHICH WOULD CAUSE A SUBSTANTIAL INJURY TO THE COMPETITIVE POSITION OF YOUR FIRM.**

5.5 General Requirements

A. The Bidder agrees to adhere to all State and Federal laws and regulations in connection with the contract.

B. The Bidder agrees to notify the Office of General Services of any changes in the legal status or principal ownership of the firm, 45 days in advance of said change.

C. The Bidder agrees that in any contract resulting from this solicitation it shall be completely responsible for its work, including any damages or breakdowns caused by its failure to take appropriate action.

D. The Bidder agrees that any contract resulting from this solicitation may not be assigned, transferred, conveyed or the work subcontracted without the prior written consent of the Commissioner of General Services.

E. For reasons of safety and public policy, in any contract resulting from this solicitation, the use of illegal drugs and/or alcoholic beverages by the Contractor or its personnel shall not be permitted while performing any phase of the work herein specified.

F. For purposes of any contract resulting from this solicitation, the State will not be liable for any expense incurred by the Contractor for any parking fees or as a consequence of any traffic infraction or parking violations attributable to employees of the Contractor.

G. OGS interpretation of specifications shall be final and binding upon the Contractor.

H. The Commissioner of OGS will make no allowance or concession to the Bidder for any alleged misunderstanding because of quantity, quality, character, location or other conditions.

I. Should it appear that there is a real or apparent discrepancy between different sections of specifications concerning the nature, quality or extent of work to be furnished, it shall be assumed that the Bidder has based its bid on the more expensive option. Final decision will rest with OGS.

J. INSPECTION – For purposes of any contract resulting from this solicitation, the quality of service is subject to inspection and may be made at any reasonable time by the State of New York. Should it be found that quality of services being performed is not satisfactory and that the requirements of the specifications are not being met, OGS may terminate the contract and employ another contractor to fulfill the requirements of the contract. The existing Contractor shall be liable to the State of New York for costs incurred on account thereof.

K. STOP WORK ORDER - OGS reserves the right to stop the work covered by this solicitation and any contract(s) resulting there from at any time that it is deemed the successful Contractor is unable or incapable of performing the work to the State's satisfaction. In the event of such stopping, OGS shall have the right to arrange for the completion of the work in such manner as it may deem advisable and if the cost thereof exceeds the amount of the bid, the Contractor shall be liable to the State of New York for any such costs on account thereof. In the event that OGS issues a stop work order for the work as provided herein, the Contractor shall have ten working days to respond thereto before any such stop work order shall become effective. Provided, however, that if an emergency exists, as reasonably determined by OGS, then the stop work order shall be effective immediately.

L. OGS reserves the right to reject and bar from the facility any employee hired by the Contractor.

5.6 Past Practice

The failure to exercise any right hereunder in the past shall not operate as a waiver of such right. No breach of this Agreement shall be deemed waived unless such waiver shall be in writing and signed by the party claimed to have waived said right. No waiver of any breach of the Agreement at any time in the past shall constitute a waiver of subsequent breach.

5.7 Subcontractors

The State will contract only with the successful Bidder who is the Prime Contractor. The Issuing Office considers the Prime Contractor, the sole Contractor with regard to all provisions of the solicitation and the contract resulting from the solicitation. **When bidding, any known / planned use of subcontractors must be disclosed in detail with bid submission**. If subcontractors are to be used for base scope services, it shall be understood that the bid price includes the cost of the subcontractor and no additional markups will be allowed.

No subcontract entered into by the Contractor shall relieve the Contractor of any liabilities or obligations in this solicitation or the resultant contract. The Contractor accepts full responsibility for the actions of any employee or subcontractor/subcontractor's employee(s) who carry out any of the provisions of any contract resulting from this solicitation.

The Contractor's use of subcontractors shall not diminish the Contractor's obligations to complete the work in accordance with the contract. The Contractor shall coordinate and control the work of the subcontractors.

The Contractor shall be responsible for informing the subcontractors of all terms, conditions, and requirements of the contract documents.

During the term of the Contract, before any part of the contract shall be sublet, the Contractor shall submit to the OGS Support Services – Food Distribution, Empire State Plaza, Room 2978, Corning Tower, Albany, NY 12242, in writing, the name of each proposed subcontractor and obtain written consent to such subcontractor. The names shall be submitted in ample time to permit acceptance or rejection of each proposed subcontractor without causing delay in the work of this contract. The Contractor shall promptly furnish such information as the Food Distribution Group may require concerning the proposed subcontractor's ability and qualifications.

5.8 Procurement Rights

The State of New York reserves the right to:

A. Reject any and all bids received in response to this Solicitation.

B. Disqualify a Bidder from receiving the award if the Bidder, or anyone in the Bidder's employ, has previously failed to perform satisfactorily in connection with public bidding or contracts.

C. Correct Bidders' mathematical errors and waive or modify other minor irregularities in bids received, after prior notification to the Bidder.

D. Adjust any Bidder's expected costs of the bid price based on a determination of the evaluation committee that the selection of the said Bidder will cause the State to incur additional costs.

E. Utilize any and all ideas submitted in the bids received.

F. Negotiate with Bidders responding to this Solicitation within the Solicitation requirements to serve the best interests of the State.

G. Begin contract negotiations with another bidding Contractor(s) in order to serve the best interests of the State of New York should the State of New York be unsuccessful in negotiating a contract with the selected Contractor within 21 days of selection notification.

H. Waive any non-material requirement not met by all Bidders.

I. Not make an award from this Solicitation.

J. Make an award under this Solicitation in whole or in part.

K. Make multiple contract awards pursuant to the Solicitation.

L. Have any service completed via separate competitive bid or other means, as determined to be in the best interest of the State.

M. Seek clarifications of bids.

N. Disqualify any bidder whose conduct and/or bid fails to conform to the requirements of the solicitation.

O. Prior to the bid opening, amend the solicitation specifications to correct errors or oversights, or to supply additional information, as it becomes available.

P. Waive any requirements that are not material.

Q. If two or more bids are found to be substantially equivalent, the Commissioner of OGS, at their sole discretion, will determine award using the pre-established process. For best value procurements, cost will be the determining factor.

Please Note: The State is not liable for any cost incurred by a Bidder in the preparation and production of a bid or for any work performed prior to the issuance of a contract.

5.9 Extent of Services

OGS reserves the right to re-negotiate at its discretion, to reduce the amount of services provided under any contract resulting from this solicitation. This reduction in services shall be effectuated by written amendment to the contract and subject to approval by the Office of the State Comptroller.

5.10 Right to Know

In accordance with the New York State Toxic Substance Act (Right-to-Know Law) and the United States Occupational Safety and Health Administration's Hazard Communication Standard, the Office of General Services has established and implemented a Right-to-Know/Hazard Communication Program. It is the policy of OGS to provide information and training to advise employees of potentially hazardous substances known to be in the work place. Part of this information is a collection of Material Safety Data Sheets for all chemicals used at State Office Buildings by contract vendors. Before any chemical product is used on or in any building, a copy of the product label and Material Safety Data Sheet must be provided to and approved by the Facility Manager before the chemical is applied.

5.11 Debriefings

Pursuant to Section 163(9)(c) of the State Finance Law, any unsuccessful Bidder may request a debriefing regarding the reasons that the Bid submitted by the Bidder was not selected for award. Requests for a debriefing must be made within 15 calendar days of notification by OGS that the Bid submitted by the Bidder was not selected for award. Requests should be submitted in writing to a designated contact identified in the Solicitation.

5.12 Termination

A) Termination

The Office of General Services may, upon 30 days' notice, terminate the contract resulting from this solicitation in the event of the awarded Bidder's failure to comply with any of the solicitation's requirements unless the awarded Bidder obtained a waiver of the requirement.

In addition, OGS may also terminate any contract resulting from this solicitation upon ten days written notice if the Contractor makes any arrangement for the assignment for the benefit of creditors.

Furthermore, OGS shall have the right, in its sole discretion, at any time to terminate a contract resulting from this solicitation, or any unit portion thereof, with or without cause, by giving 30 days written notice of termination to the Contractor.

B) Procurement Lobbying Termination

The Office of General Services reserves the right to terminate this Agreement in the event it is found that the certification filed by the Contractor in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Office of

General Services may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of this Agreement.

C) Effect of Termination

Any termination by OGS under this Section shall in no event constitute or be deemed a breach of any contract resulting from this solicitation and no liability shall be incurred by or arise against the Office of General Services, its agents and employees therefore for lost profits or any other damages.

D) USDA Regulations Law 7 CFR Part 250.12(f)(9)

Termination of the contract by either party for other cause, after written notification of such intent at least 60 days prior to the effective date of such action.

5.13 NYS Standard Vendor Responsibility Questionnaire

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 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, https://www.osc.state.ny.us/vendrep/index.htm or to enroll, go directly to the VendRep System online at https://www.osc.state.ny.us/vendrep/info_vrsystem.htm.

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 the paper questionnaire can access this form and associated definitions via the OSC website at: http://www.osc.state.ny.us/vendrep/forms_vendor.htm.

In order to assist the State in determining the responsibility of the Bidder prior to Contract Award, the Bidder must complete and certify (or recertify) the Questionnaire no more than six 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 or her designee, 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 or her designee, 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 or her designee issues a written notice authorizing a resumption of performance under 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 or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of OGS or her designee to be non-responsible. In such event, the Commissioner of OGS or her designee 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.

5.14 Ethics Compliance

All proposers/contractors and their employees must comply with the requirements of §§73 and 74 of the Public Officers Law, other state codes, rules, regulations, and executive orders establishing ethical standards for the conduct of business with New York State. In signing the Contract, the Contractor certifies full compliance with those provisions for any present or future dealings, transactions, sales, contracts, services, offers, relations, etc., involving New York State and/or its employees. Failure to comply with those provisions may result in disqualification from the bidding process, termination of contract, and/or other civil or criminal proceedings as required by law.

5.15 New York State Vendor File Registration

Prior to being awarded a contract pursuant to this Solicitation, the Bidder(s) 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, unique New York State ten-digit vendor identification numbers will be assigned to your company for usage on all future transactions with New York State. Additionally, the Vendor File enables vendors 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, list the ten-digit vendor ID number on the Contractor Information page included in Appendix B of this solicitation.

If the Bidder is not currently registered in the Vendor File and is recommended for award, OGS shall request completion of OSC Substitute W-9 Form. A fillable form with instructions can be found at the link below. The Office of General Services will initiate the vendor registration process for all Bidders recommended for Contract Award. Once the process is initiated, registrants will receive an email from OSC that includes the unique ten-digit vendor identification number assigned to the company 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: http://www.osc.state.ny.us/vendors/index.htm

Form to be completed: https://www.osc.state.ny.us/sites/default/files/vendors/2017-11/vendor-form-ac3237s-fe.pdf

5.16 Indemnification

The Contractor shall assume all risks of liability for its performance, or that of any of its officers, employees, subcontractors or agents, of any contract resulting from this solicitation and shall be solely responsible and liable for all liabilities, losses, damages, costs or expenses, including attorney's fees, arising from any claim, action or proceeding relating to or in any way connected with the performance of this Agreement and covenants and agrees to indemnify and hold

harmless the State of New York, its agents, officers and employees, from any and all claims, suits, causes of action and losses of whatever kind and nature, arising out of or in connection with its performance of any contract resulting from this solicitation, including negligence, active or passive or improper conduct of the Contractor, its officers, agents, subcontractors or employees, or the failure by the Contractor, its officers, agents, subcontractors or employees to perform any obligations or commitments to the State or third parties arising out of or resulting from any contract resulting from this solicitation. Such indemnity shall not be limited to the insurance coverage herein prescribed its officers, agents, subcontractors or employees to perform any obligations or commitments to the State or third parties arising out of or resulting from any contract resulting from this solicitation. Such indemnity shall not be limited to the insurance coverage herein prescribed.

5.17 Force Majeure

Neither party hereto will be liable for losses, defaults, or damages under any contract resulting from this solicitation which result from delays in performing, or inability to perform, all or any of the obligations or responsibilities imposed upon it pursuant to the terms and conditions of this solicitation, due to or because of acts of God, the public enemy, acts of government, earthquakes, floods, strikes, civil strife, fire or any other cause beyond the reasonable control of the party that was so delayed in performing or so unable to perform provided that such party was not negligent and shall have used reasonable efforts to avoid and overcome such cause. Such party will resume full performance of such obligations and responsibilities promptly upon removal of any such cause.

5.18 Encouraging use of New York State Businesses in Contract Performance

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of the economic activity and leadership such businesses offer, Contractors are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of this agreement. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.

Bidders need to be aware that all authorized users of this contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore, bidders are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its New York State business partners. New York State businesses will promote the contractor's optimal performance under the contract, thereby fully benefiting the public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. The State therefore expects bidders to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.

5.19 Appendices and Exhibits

The Bidder's attention is directed to the appendices and exhibit documents attached hereto and hereby incorporated by reference and made part hereto as fully as if it were set forth at length

herein. They are part of this solicitation and will be part of the subsequent contract. The Bidder is responsible for adhering to all requirements of the appendices and exhibits.

5.20 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 the economic activity such businesses offer, 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 to discuss methods of maximizing participation by SDVOBs on the Contract.

5.21 Contractors Compensatory Liability

In the event that the contractor fails to complete any of the specified services within the timeframe required, OGS reserves the right to have such work completed either by another contractor or with in-house staff. In any such event, the contractor shall be liable to reimburse OGS for all costs incurred to complete the work. OGS further reserves the right to collect such reimbursement from any outstanding payments due to the contractor.

5.22 Civil Rights

The program applicant hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.); all provisions required by the implementing regulations of the Department of Agriculture; Department of Justice Enforcement Guidelines, 28 CFR Part SO.3 and 42; and FNS directives and guidelines, to the effect that, no person shall, on the grounds of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied benefits of, or otherwise be subject to discrimination under any program or activity for which the program applicant receives Federal financial assistance from FNS; and hereby gives assurance that it will immediately take measures necessary to effectuate this agreement.

5.23 Sexual Harassment Prevention

Pursuant to N.Y. State Finance Law § 139-l, 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-l, 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 Appendix B – NYS Required Certifications, which Bidder must submit with its bid.

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

October 2019

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STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds $50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds $25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed $85,000 (State Finance Law § 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of $50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-

a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds $5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, the "Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of

$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of $100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of $100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a," "b," and "c" above, in every subcontract over $25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. <u>CONFLICTING TERMS</u>. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. <u>GOVERNING LAW</u>. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. <u>LATE PAYMENT</u>. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. <u>NO ARBITRATION</u>. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. <u>SERVICE OF PROCESS</u>. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. <u>PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS</u>. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by

any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
Albany, New York 12245
Telephone: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

A directory of certified minority- and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414
email: mwbecertification@esd.ny.gov
https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)–(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than $1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5))) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.
To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

Solicitation 2388

Appendix B – Required Forms

Required Forms – Table of Contents

The following required forms are to be submitted with the proposer's proposal. The forms include:

- ☐ Contractor Information Page
- ☐ Corporate Acknowledgement (must be notarized)
- ☐ Offerer's Affirmation of Understanding of and Agreement pursuant to New York State Finance Law §139-j (3) and §139-j (6) (b)
- ☐ Offerer Disclosure of Prior Non-Responsibility Determinations
- ☐ Offerer's Certification of Compliance with State Finance Law §139-k(5)
- ☐ NYS Required Certifications
  - Nondiscrimination In Employment In Northern Ireland Macbride Fair Employment Principles
  - Non-Collusive Bidding Certification
  - Diesel Emission Reduction Act
  - Executive Order No 177 Certification
  - State Finance Law § 139-l Certification
  - Small Business Certifications
- ☐ ST-220 -TD Taxation & Finance Contractor Certification (Submitted directly to Taxation & Finance)
- ☐ ST-220 -CA Taxation and Finance Covered Agency Certification
- ☐ EEO 100- Equal Employment Opportunity Staffing Plan

Contractor Information

Solicitation Number **2388**

Offerer affirms that it understands and agrees to comply with the procedures of the Government Entity relative to permissible contacts as required by New York State Finance Law §139-j (3) and §139-j (6) (b).

Authorized Signature		Date	
Print Name	Title		
Company Name			
Federal ID Number	NYS Vendor ID Number		
Address			
City	State	Zip	County
Telephone Number	Ext	Toll Free Telephone	Ext
Fax Number	Toll Free Fax Number		
Email of Designated Contact			

Please identify if any of the following apply:

New York State Small Business as defined in Executive Law Section 310(20) and as detailed in the "New York State Required Certifications" included in Appendix B herein.	☐ Yes	☐ No
New York State Certified Minority Owned Business	☐ Yes	☐ No
New York State Certified Woman Owned Business	☐ Yes	☐ No
New York State Certified Service-Disabled Veteran-Owned Business	☐ Yes	☐ No
Do you understand and is your firm capable of meeting the insurance requirements to enter into a contract with New York State?	☐ Yes	☐ No
Will New York State Businesses be used in the performance of this contract?	☐ Yes	☐ No
If yes, identify New York State Business(es) that will be used; (Attach identifying information).		
Does your proposal meet all the requirements of this solicitation?	☐ Yes	☐ No

Is your firm making a claim that any portions of its bid should be exempt from release under the Freedom of Information Law, as they constitute trade secrets, or information the disclosure of which would cause a substantial injury to your firm's competitive position? **(Please review the clause entitled "Freedom of Information Law / Trade Secrets" of this Solicitation before answering).**	☐ Yes	☐ No
If "Yes", please identify the specific portions of your bid for which you are claiming this exemption, and the reasons for such claimed exemption. Attach additional sheets, if necessary		

STATE OF)

SS.:

COUNTY OF)

On this_____day of _____, 20__ , before me personally came

_____ , to me known and known to me to be the person described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

_____

Notary Public

Registration No._____

State of:_____

Offerer's Affirmation of Understanding of and Agreement pursuant to New York State Finance Law §139-j (3) and §139-j (6) (b)

New York State Finance Law §139-j(6)(b) provides that:

Every Governmental Entity shall seek written affirmations from all Offerers as to the Offerer's understanding of and agreement to comply with the Governmental Entity's procedures relating to permissible contacts during a Governmental Procurement pursuant to subdivision three of this section.

Offerer affirms that it understands and agrees to comply with the procedures of the Government Entity relative to permissible contacts as required by New York State Finance Law §139-j (3) and §139-j (6) (b).			
Authorized Signature		Date	
Print Name		Title	
Company Name			
Address			
City	State	Zip	

Offerer Disclosure of Prior Non-Responsibility Determinations

Background:

New York State Finance Law §139-k(2) obligates a Governmental Entity to obtain specific information regarding prior non-responsibility determinations with respect to State Finance Law §139-j. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law §163(9). In accordance with State Finance Law §139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any Governmental Entity due to: (a) a violation of State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. The terms "Offerer" and "Governmental Entity" are defined in State Finance Law § 139-k(1). State Finance Law §139-j sets forth detailed requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law

§139-j includes, but is not limited to, an impermissible Contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such contact does not fall within one of the exemptions).

As part of its responsibility determination, State Finance Law §139-k(3) mandates consideration of whether an Offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and that the Offerer is the only source capable of supplying the required Article of Procurement within the necessary timeframe. See State Finance Law §§139-j (10)(b) and 139-k(3).

Instructions:

A Governmental Entity must include a disclosure request regarding prior non-responsibility determinations in accordance with State Finance Law §139-k in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for procurement contracts. The attached form is to be completed and submitted by the individual or entity seeking to enter into a Procurement Contract. It shall be submitted to the Governmental Entity conducting the Governmental Procurement.

Offerer Disclosure of Prior Non-Responsibility Determinations

Name of Individual or Entity Seeking to Enter into the Procurement Contract			
Address			
City	State	Zip	
Person Submitting this Form	Title	Date	**2388** Contract Procurement Number

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years?	☐ No	☐ Yes
If yes, please answer questions 2-4 before proceeding to question 5. If no, please go to question 5.		
2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j	☐ No	☐ Yes
3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity?	☐ No	☐ Yes
4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.		
Governmental Entity	Date of Finding of Non-responsibility	
Basis of Finding of Non-Responsibility (Add additional pages as necessary)		
5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information?	☐ No	☐ Yes
6. If yes, please provide details below.		
Governmental Entity	Date of Termination or Withholding of Contract	
Basis of Termination or Withholding (Add additional pages as necessary)		

Offerer certifies that all information provided to the Governmental Entity with respect to State Finance Law §139-k is complete, true and accurate.

By: _____ Date: _____
Signature

Offerer's Certification of Compliance with State Finance Law §139-k(5)

New York State Finance Law §139-k(5) requires that every Procurement Contract award subject to the provisions of State Finance Law §§139-k or 139-j shall contain a certification by the Offerer that all information provided to the Office of General Services with respect to State Finance Law §139-k is complete, true and accurate.

Offerer Certification:

I certify that all information provided to the Office of General Services with respect to State Finance Law §139-k is complete, true and accurate.

Authorized Signature		Date	
Print Name		Title	
Company Name			
Address			
City	State	Zip	

Procurement Lobbying Termination

The Office of General Services reserves the right to terminate this contract in the event it is found that the certification filed by the Offerer in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Office of General Services may exercise its termination right by providing written notification to the Offerer in accordance with the written notification terms of this contract.

NYS REQUIRED CERTIFICATIONS

Nondiscrimination In Employment In Northern Ireland
Macbride Fair Employment Principles

In accordance with Section 165 of the State Finance Law, the bidder, by submission of this bid, certifies that it or any individual or legal entity in which the bidder holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership interest in the bidder, either (answer yes or no to one or both of the following, as applicable):

1. have business operations in Northern Ireland ☐ No ☐ Yes , **and if yes**:
2. shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to nondiscrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of compliance with such principles.
   ☐ No ☐ Yes

Non-Collusive Bidding Certification

In accordance with Section 139-d of the State Finance Law, by submitting its bid each bidder and each person signing on behalf of any other bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his or her knowledge and belief:

1. The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor.
2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor.
3. No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

In the event that the Bidder is unable to certify as stated above, the Bidder shall provide a signed statement which sets forth in detail the reasons why the Bidder is unable to furnish the certificate as required in accordance with State Finance Law § 139-d(1)(b).

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 contract vendors “on behalf of” State agencies and public authorities and require certain reports from contract vendors. 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.

Executive Order No. 177 Certification

The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status or predisposing genetic characteristics.

The Human Rights Law may also require reasonable accommodation for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require reasonable accommodation in employment on the basis of Sabbath observance or religious practices.

Generally, the Human Rights Law applies to:

- all employers of four or more people, employment agencies, labor organizations and apprenticeship training programs in all instances of discrimination or harassment;
- employers with fewer than four employees in all cases involving sexual harassment; and,
- any employer of domestic workers in cases involving sexual harassment or harassment based on gender, race, religion or national origin.

In accordance with Executive Order No. 177, the Bidder hereby certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.

Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including but not limited to the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.

State Finance Law § 139-l Certification

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, 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 section two hundred one-g of the labor law.

If the bidder cannot make the foregoing 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.

Small Business Certifications

State Finance Law § 163(1)(j) (Authorizes Award of Quantitative Factor Credit for Small Business Status in Evaluation for Best Value Contracts)
For purposes of New York State Finance Law § 163(1)(j), the contractor certifies that it:

☐ **IS NOT** a Small Business as defined in New York State Executive Law § 310(20).

☐ **IS** a Small Business as defined in New York State Executive Law § 310(20).

"Small Business" is defined under New York State Executive Law § 310(20) as a business that:

A. has a significant business presence in New York demonstrated through one of the following:
   1. pays taxes in New York State, or
   2. purchases New York State products or materials, or
   3. has any payroll in New York State
B. is independently owned and operated;
C. is not dominant in its field; and,
D. employs less than 300 persons.

State Finance Law § 163(6) (Authorizes Discretionary Purchases of Commodities or Services from Small Business Concerns)

For purposes of New York State Finance Law § 163(6), the contractor certifies that it:

☐ **IS NOT** a Small Business Concern or Small Business as defined in New York State Finance Law § 160(8).

☐ **IS** a Small Business Concern or Small Business as defined in New York State Finance Law § 160(8).

"Small Business Concern" or "Small Business" is defined under New York State Finance Law § 160(8) as a business that:

A. is resident in New York State;
B. is independently owned and operated;
C. is not dominant in its field; and
D. employs 100 or less persons.

By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this Certifications document and that all information provided is complete, true and accurate.

Authorized Signature		Date	
Print Name		Title	
Company Name			
D/B/A – Doing Business As (if applicable)			
Address			
City	State	Zip	

NYS Department of Taxation and Finance - FORMS

CONTRACTOR CERTIFICATION (ST-220-TD 12/11)
CONTRACTOR CERTIFICATION TO COVERED AGENCY (ST-220-CA 12/11)

Department of Taxation and Finance

Contractor Certification

(Pursuant to Tax Law Section 5-a, as amended, effective April 26, 2006)

ST-220-TD

(4/15)

For information, consult Publication 223, *Questions and Answers Concerning Tax Law Section 5-a* (see *Need help?* below).

Contractor name			
Contractor's principal place of business	City	State	ZIP code
Contractor's mailing address *(if different than above)*	City	State	ZIP code

Contractor's federal employer identification number (EIN)	Contractor's sales tax ID number (if different from contractor's EIN)	Contractor's telephone number ( )
Covered agency or state agency	Contract number or description	Covered agency telephone number ( )
Covered agency address	City / State	ZIP code

Is the estimated contract value over the full term of the contract (but not including renewals) more than $100,000?

Yes ☐ No ☐ Unknown at this time ☐

General information

Tax Law section 5-a, as amended, effective April 26, 2006, requires certain contractors awarded certain state contracts valued at more than $100,000 to certify to the Tax Department that they are registered to collect New York State and local sales and compensating use taxes, if they made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000, measured over a specified period. In addition, contractors must certify to the Tax Department that each affiliate and subcontractor exceeding such sales threshold during a specified period is registered to collect New York State and local sales and compensating use taxes. Contractors must also file Form ST-220-CA, *Contractor Certification to Covered Agency,* certifying to the procuring state entity that they filed Form ST-220-TD with the Tax Department and that the information contained on Form ST-220-TD is correct and complete as of the date they file Form ST-220-CA.

All sections must be completed including all fields on the top of this page, all sections on page 2, Schedule A on page 3, if applicable, and *Individual, Corporation, Partnership, or LLC Acknowledgement* on page 4. If you do not complete these areas, the form will be returned to you for completion.

For more detailed information regarding this form and Tax Law section 5-a, see Publication 223, *Questions and Answers Concerning Tax Law Section 5-a, (as amended, effective April 26, 2006)*. See *Need help?* for more information on how to obtain this publication.

Note: Form ST-220-TD must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 4 of this form must be completed before a notary public.

Mail completed form to:

NYS TAX DEPARTMENT
DATA ENTRY SECTION
W A HARRIMAN CAMPUS
ALBANY NY 12227-0826

Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our Web site, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

Need help?

Visit our Web site at ***www.tax.ny.gov***

- get information and manage your taxes online
- check for new online services and features

Telephone assistance

Sales Tax Information Center:	(518) 485-2889
To order forms and publications:	(518) 457-5431
Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY):	(518) 485-5082

Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.

I, _____ , hereby affirm, under penalty of perjury, that I am _____
(name) *(title)*
of the above-named contractor, and that I am authorized to make this certification on behalf of such contractor.

Complete Sections 1, 2, and 3 below. Make **only one** entry in each section.

Section 1 – Contractor registration status

☐ The contractor has made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made. The contractor is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to Tax Law sections 1134 and 1253, and is listed on Schedule A of this certification.

☐ The contractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 2 – Affiliate registration status

☐ The contractor does not have any affiliates.

☐ To the best of the contractor's knowledge, the contractor has one or more affiliates having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each affiliate exceeding the $300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to Tax Law sections 1134 and 1253. The contractor has listed each affiliate exceeding the $300,000 cumulative sales threshold during such quarters on Schedule A of this certification.

☐ To the best of the contractor's knowledge, the contractor has one or more affiliates, and each affiliate has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Section 3 – Subcontractor registration status

☐ The contractor does not have any subcontractors.

☐ To the best of the contractor's knowledge, the contractor has one or more subcontractors having made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made, and each subcontractor exceeding the $300,000 cumulative sales threshold during such quarters is registered to collect New York State and local sales and compensating use taxes with the Commissioner of Taxation and Finance pursuant to Tax Law sections 1134 and 1253. The contractor has listed each subcontractor exceeding the $300,000 cumulative sales threshold during such quarters on Schedule A of this certification.

☐ To the best of the contractor's knowledge, the contractor has one or more subcontractors, and each subcontractor has not made sales delivered by any means to locations within New York State of tangible personal property or taxable services having a cumulative value in excess of $300,000 during the four sales tax quarters which immediately precede the sales tax quarter in which this certification is made.

Sworn to this____ day of _____ , 20 _____

_____ _____
(sign before a notary public) *(title)*

Schedule A – Listing of each entity (contractor, affiliate, or subcontractor) exceeding $300,000 cumulative sales threshold

List the contractor, or affiliate, or subcontractor in Schedule A only if such entity exceeded the $300,000 cumulative sales threshold during the specified sales tax quarters. See directions below. For more information, see Publication 223.

A Relationship to contractor	B Name	C Address	D Federal ID number	E Sales tax ID number	F Registration in progress

Column A – Enter ***C*** in column A if the contractor; ***A*** if an affiliate of the contractor; or ***S*** if a subcontractor.

Column B – Name - If the entity is a corporation or limited liability company, enter the exact legal name as registered with the NY Department of State, if applicable. If the entity is a partnership or sole proprietor, enter the name of the partnership and each partner's given name, or the given name(s) of the owner(s), as applicable. If the entity has a different DBA (doing business as) name, enter that name as well.

Column C – Address - Enter the street address of the entity's principal place of business. Do not enter a PO box.

Column D – ID number - Enter the federal employer identification number (EIN) assigned to the entity. If the entity is an individual, enter the social security number of that person.

Column E – Sales tax ID number - Enter only if different from federal EIN in column D.

Column F – If applicable, enter an X if the entity has submitted Form DTF-17 to the Tax Department but has not received its certificate of authority as of the date of this certification.

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
: SS.:
COUNTY OF }

On the ____ day of _____ in the year 20___ , before me personally appeared _____ ,

known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that

_ he resides at _____ ,

Town of _____ ,

County of _____ ,

State of _____; and further that:

*(Mark an **X** in the appropriate box and complete the accompanying statement.)*

☐ (If an individual): _he executed the foregoing instrument in his/her name and on his/her own behalf.

☐ (If a corporation): _he is the _____

of _____ , the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, _he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

☐ (If a partnership): _he is a _____

of _____ , the partnership described in said instrument; that, by the terms of said partnership, _he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

☐ (If a limited liability company): _he is a duly authorized member of _____ LLC, the limited liability company described in said instrument; that _he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

_____
Notary Public

Registration No. _____

New York State Department of Taxation and Finance

Contractor Certification to Covered Agency

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

ST-220-CA

(12/11)

For information, consult Publication 223, *Questions and Answers Concerning Tax Law Section 5-a* (see *Need Help?* on back).

Contractor name				*For covered agency use only* *Contract number or description*
Contractor's principal place of business	City	State	ZIP code	
Contractor's mailing address *(if different than above)*				*Estimated contract value over the full term of contract (but not including renewals)* $
Contractor's federal employer identification number (EIN)	Contractor's sales tax ID number (if different from contractor's EIN)			
Contractor's telephone number	Covered agency name			
Covered agency address				*Covered agency telephone number*

I, _____ , hereby affirm, under penalty of perjury, that I am _____
(name) *(title)*

of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify that:

(Mark an **X** *in only one box)*

☐ The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.

☐ The contractor has previously filed Form ST-220-TD with the Tax Department in connection with _____
(insert contract number or description)

and, to the best of the contractor's knowledge, the information provided on that previously filed Form ST-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this ____ day of _____, 20 _____

_____ _____
(sign before a notary public) *(title)*

Instructions

General information

Tax Law section 5-a was amended, effective April 26, 2006. On or after that date, in all cases where a contract is subject to Tax Law section 5-a, a contractor must file (1) Form ST-220-CA, *Contractor Certification to Covered Agency,* with a covered agency, and (2) Form ST-220-TD with the Tax Department before a contract may take effect. The circumstances when a contract is subject to section 5-a are listed in Publication 223, Q&A 3. See *Need help?* for more information on how to obtain this publication. In addition, a contractor must file a new Form ST-220-CA with a covered agency before an existing contract with such agency may be renewed.

Note: Form ST-220-CA must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 2 of this form must be completed before a notary public.

When to complete this form

As set forth in Publication 223, a contract is subject to section 5-a, and you must make the required certification(s), if:

i. The procuring entity is a *covered agency* within the meaning of the statute (see Publication 223, Q&A 5);

ii. The contractor is a *contractor* within the meaning of the statute (see Publication 223, Q&A 6); and

iii. The contract is a *contract* within the meaning of the statute. This is the case when it (a) has a value in excess of $100,000 and (b) is a contract for *commodities* or *services*, as such terms are defined for purposes of the statute (see Publication 223, Q&A 8 and 9).

Furthermore, the procuring entity must have begun the solicitation to purchase on or after January 1, 2005, and the resulting contract must have been awarded, amended, extended, renewed, or assigned *on or after April 26, 2006* (the effective date of the section 5-a amendments).

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF }
: SS.:
COUNTY OF }

On the ____ day of _____ in the year 20___ , before me personally appeared_____ ,

known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that

_he resides at _____ ,

Town of _____ ,

County of _____ ,

State of _____; and further that:

[Mark an ***X*** in the appropriate box and complete the accompanying statement.]

☐ (If an individual): _he executed the foregoing instrument in his/her name and on his/her own behalf.

☐ (If a corporation): _he is the_____

of_____ , the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, _he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

☐ (If a partnership): _he is a _____

of_____ , the partnership described in said instrument; that, by the terms of said partnership, _he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

☐ (If a limited liability company): _he is a duly authorized member of _____ , LLC, the limited liability company described in said instrument; that _he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

_____
Notary Public

Registration No.
_____

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law.

This information is maintained by the Manager of Document Management, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone (518) 457-5181.

Need help?

Visit our Web site at ***www.tax.ny.gov***
- get information and manage your taxes online
- check for new online services and features

Telephone assistance

Sales Tax Information Center: (518) 485-2889

To order forms and publications: (518) 457-5431

Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): (518) 485-5082

Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.

NEW YORK STATE OF OPPORTUNITY. Office of General Services | Office of Minority and Women-Owned Businesses & Community Relations

EQUAL EMPLOYMENT OPPORTUNITY STAFFING PLAN

General instructions: Contact the Designated Contact(s) for the solicitation if you have any questions. **All Offerors** must complete an EEO Staffing Plan (EEO 100) and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's total work force, the Offeror shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's total work force, the Offeror shall complete this form for the contractor's total work force. Subcontractors awarded a subcontract over $25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor must complete this form upon request of OGS.

Instructions for completing:

1. Enter the Solicitation Number that this report applies to along with the name and address of the Offeror.
2. Check off the appropriate box to indicate if the Offeror completing the report is the contractor or a subcontractor.
3. Check off the appropriate box to indicate if the work force being reported is just for the contract or the Offerors' total work force.
4. Enter the total work force by EEO job category.
5. Break down the total work force by gender and enter under the heading "Work force by Gender."
6. Break down the total work force by race/ethnic background and enter under the heading "Work force by Race/Ethnic Identification." Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

RACE/ETHNIC IDENTIFICATION

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

WHITE - (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.

BLACK - A person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.

HISPANIC - A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

ASIAN & PACIFIC ISLANDER - A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

AMERICAN INDIAN OR ALASKAN NATIVE (Not of Hispanic Origin) - A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

NEW YORK STATE OF OPPORTUNITY. Office of General Services | Office of Minority and Women-Owned Businesses & Community Relations

EQUAL EMPLOYMENT OPPORTUNITY STAFFING PLAN

SUBMIT WITH BID OR PROPOSAL or within a reasonable time thereafter as requested by OGS, but prior to Contract Award.

Solicitation No.: 2388	**Reporting Entity:** ☐ Contractor ☐ Subcontractor	Report includes Contractor's ☐ Contractor's work force to be utilized on this contract ☐ Contractor's total work force ☐ Subcontractor's work force to be utilized on this contract ☐ Subcontractor's total work force
Contractor/Subcontractor's Name:		
Contractor/Subcontractor's Address: **FEIN:**		

Enter the total number of employees for each classification:

EEO Job Category	Total Work Force	Work force by Gender		Work force by Race/Ethnic Identification													
		Total Male (M)	Total Female (F)	White (M)	White (F)	Black (M)	Black (F)	Hispanic (M)	Hispanic (F)	Asian (M)	Asian (F)	American Indian or Alaskan Native (M)	American Indian or Alaskan Native (F)	Veteran (M)	Veteran (F)	(M)	(F)
Executive/Senior level Officials & Managers																	
First/Mid-level officials & Managers																	
Professionals																	
Technicians																	
Sales Workers																	
Administrative Support Workers																	
Craft Workers																	
Operatives																	
Laborers and Helpers																	
Service Workers																	
Totals																	

PREPARED BY (Signature):	**TELEPHONE NO.:** **EMAIL ADDRESS:**	**DATE:**
NAME AND TITLE OF PREPARER (Print or Type):		

Appendix C

Sample Contract

Solicitation No. 2388

SAMPLE

STATE OF NEW YORK

OFFICE OF GENERAL SERVICES

AGREEMENT FOR

WAREHOUSING & DISTRIBUTION (DELIVERY) SERVICES OF USDA DONATED FOOD COMMODITIES

IN REGION L – COUNTIES OF CAYUGA, ONONDAGA, ONTARIO, SENECA, WAYNE, AND YATES

WITH

(CONTRACTOR)

CONTRACT #OGS01-C00XXXX-1140000

THIS AGREEMENT, made this ____ day of _____, 2020 by and between the People of the State of New York, acting by and through the Commissioner of General Services, whose office is in the Corning Tower Building, at the Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242 (hereinafter "Commissioner", "OGS" or "State"), and (Company Name), (hereinafter "Contractor"), with an office at _____.

W I T N E S S E T H:

WHEREAS, the OGS is responsible for the Warehousing and Distribution (delivery) of United States Department of Agriculture (USDA) food commodities in Region L – Counties of Cayuga, Onondaga, Ontario, Seneca, Wayne, and Yates and in fulfilling its responsibility deems it necessary to obtain warehousing and distribution services therefore, and

WHEREAS, OGS has determined after having solicited proposals from proposers willing to supply these services, that the Contractor submitted the proposal affording the State the lowest price for such services and that the Contractor possesses the necessary capacity, experience and expertise for provision of warehousing and distribution services, and that Contractor is ready, willing and able to perform such services on the terms hereinafter set forth.

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties do hereby agree as follows:

1. CONSIDERATION

OGS shall pay the Contractor for all warehousing and distribution services fees and other fees and expenses in accordance with the amounts and rates put forth in the Contractor's proposal attached hereto as Appendix "C", which Appendix C is hereby incorporated by reference and made a part hereof as fully as if set forth as length herein. This contract will be established with

SAMPLE

a not to exceed value of $_____. Services performed beyond this amount will not be compensated.

2. TERM

This Agreement shall commence July 1, 2021 and will be in effect for five (5) years unless sooner terminated as herein specified.

3. SERVICES

The Contractor agrees to perform this Agreement and to furnish the services, labor and materials required in connection therewith in accordance with all the specifications, conditions, covenants and representations contained in the Invitation for Bids No. 2388, which is annexed as Appendix "B" hereto, and the Contractor's bid, annexed as Appendix "C" hereto, except as such Appendices B and C have been revised by the terms hereof. Appendix B is hereby incorporated by reference and made a part hereof with the same force and effect as if set forth at length herein.

4. TERMINATION

This Agreement may be terminated in accordance with the termination provisions set forth in the solicitation attached hereto as Appendix B hereof.

A) Termination

The Office of General Services may, upon 30 days' notice, terminate the contract resulting from this solicitation in the event of the awarded Bidder's failure to comply with any of the proposal's requirements unless the awarded Bidder obtained a waiver of the requirement.

In addition, OGS may also terminate any contract resulting from this solicitation upon ten days written notice if the Contractor makes any arrangement for the assignment for the benefit of creditors.

Furthermore, OGS shall have the right, in its sole discretion, at any time to terminate a contract resulting from this solicitation, or any unit portion thereof, with or without cause, by giving 30 days written notice of termination to the Contractor.

B) Procurement Lobbying Termination

The Office of General Services reserves the right to terminate this Agreement in the event it is found that the certification filed by the Contractor in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the Office of General Services may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of this Agreement.

C) Effect of Termination

Any termination by OGS under this Section shall in no event constitute or be deemed a breach of any contract resulting from this solicitation and no liability shall be incurred by or arise against the Office of General Services, its agents and employees therefore for lost profits or any other damages.

SAMPLE

D) USDA Regulations Law 7 CFR Part 250.12(f)(9)

Termination of the contract by either party for other cause, after written notification of such intent at least 60 days prior to the effective date of such action.

5. RECORDS

The Contractor will maintain accurate records and accounts of services performed and monies expended under this Agreement. Such records will be maintained for six (6) years following the close of the State fiscal year to which they pertain and will be made available to representatives of OGS or the New York State Comptroller, as may be necessary for auditing purposes, upon request.

6. TAXES

The Contractor will be responsible for all applicable Federal, State and Local taxes and all FICA contributions.

7. INDEPENDENT CONTRACTOR

It is understood and agreed that the legal status of the Contractor, its subcontractors, agents, officers and employees is that of an independent contractor and in no manner shall they be deemed employees or agents of the State of New York and, therefore, are not entitled to any of the benefits associated with such employment or designation.

8. APPENDIX A

Appendix A, Standard Clauses for New York State Contracts, attached hereto, is hereby expressly made a part of this Agreement as fully as if set forth at length herein.

9. ASSIGNMENT

Contractor agrees that it will not assign this Agreement, or any interest therein without the prior written consent of the Commissioner of General Services.

10. LAW

This Agreement shall be governed by the laws of the State of New York.

11. CONDITIONS PRECEDENT

This Agreement shall not be deemed executed, valid or binding unless and until approved in writing by the Attorney General and the State Comptroller.

12. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the parties hereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and this Agreement shall not be changed, modified or altered in any manner except by an instrument in writing executed by both parties hereto.

SAMPLE

13. EXECUTORY CLAUSE

This Agreement shall be deemed executory only to the extent of money available to the State for performance of the terms hereof and no liability on account thereof shall be incurred by the State of New York beyond moneys available for purposes thereof.

14. INCONSISTENCIES

In the event of any discrepancy, disagreement or ambiguity between this contract agreement and Appendix B "Solicitation" and/or Appendix C "Bid", or between any Appendices, the documents shall be given preference in the following order to interpret and to resolve such discrepancy, disagreement or ambiguity:

1. Appendix A
2. This Contract Agreement
3. Appendix B – Solicitation #2388 including Addenda
4. Appendix C – Contractor's Bid

The parties understand and agree that any and all deviations or exceptions taken by Contractor to the State's Invitation to Bid are hereby withdrawn except only to the extent that such exceptions or deviations have been explicitly incorporated into this contract agreement.

15. FORCE MAJEURE

Neither party hereto will be liable for losses, defaults, or damages under this Agreement which result from delays in performing, or inability to perform, all or any of the obligations or responsibilities imposed upon it pursuant to the terms and conditions of this Agreement, due to or because of acts of God, the public enemy, acts of government, earthquakes, floods, strikes, civil strife, fire or any other cause beyond the reasonable control of the party that was so delayed in performing or so unable to perform provided that such party was not negligent and shall have used reasonable efforts to avoid and overcome such cause. Such party will resume full performance of such obligations and responsibilities promptly upon removal of any such cause.

16. ASSIGNMENT BY STATE

The State agrees not to assign this Agreement without prior notice to and reasonable consent of the Contractor provided, however, that this Agreement may be assigned without such consent to another agency or subdivision of the State pursuant to a governmental reorganization or assignment of functions under which the pertinent functions of OGS as an agency are transferred to a successor agency or subdivision of the State.

17. NOTICES

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this Agreement shall be in writing and shall be validly given when mailed by registered or certified mail, overnight carrier or hand delivered, (i) if to the State, addressed to the State at its address set forth above, and (ii) if to Contractor, addressed to Contractor at its address set forth above. The parties may from time to time, specify any address in the United States as its address for purpose of notices under this Agreement by

SAMPLE

giving fifteen (15) days written notice to the other party. The parties agree to mutually designate individuals as their respective representatives for the purposes of this Agreement.

18. CAPTIONS

The captions contained in this Agreement are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

19. SEVERABILITY

In the event that any one or more of the provisions of this Agreement shall for any reason be declared unenforceable under the laws or regulations in force, such provision will not have any effect on the validity of the remainder of this Agreement, which shall then be construed as if such unenforceable provision had never been written or was never contained in this Agreement.

20. INFORMATION SECURITY BREACH

In accordance with the Information and Security Breach Notification Act (ISBNA) (Chapter 442 of the Laws of 2005, as amended by Chapter 491 of the Laws of 2005), a Contractor with OGS shall be responsible for all applicable provisions of the ISBNA and the following terms herein with respect to any private information (as defined in the ISBNA) received by or on behalf of OGS under this Agreement.

- Contractor shall supply OGS with a copy of its notification policy, which shall be modified to be in compliance with this provision, as well as OGS's notification policy.
- Contractor must encrypt any database fields and backup tapes that contain private data elements, as set forth in the ISBNA.
- Contractor must ensure that private data elements are encrypted in transit to / from their systems.
- In general, contractor must ensure that private data elements are not displayed to users on computer screens or in printed reports; however, specific users who are authorized to view the private data elements and who have been properly authenticated may view/receive such data.
- Contractor must monitor for breaches of security to any of its systems that store or process private data owned by OGS.
- Contractor shall take all steps as set forth in ISBNA to ensure private information shall not be released without authorization from OGS.
- In the event a security breach occurs as defined by ISBNA Contractor shall immediately notify OGS and commence an investigation in cooperation with OGS to determine the scope of the breach.
- Contractor shall also take immediate and necessary steps needed to restore the information security system to prevent further breaches.
- Contractor shall immediately notify OGS following the discovery that OGS's system security has been breached.

SAMPLE

- Unless the Contractor is otherwise instructed, Contractor is to first seek consultation and receive authorization from OGS prior to notifying the individuals whose personal identity information was compromised by the breach of security, the New York State Chief Information Security Office, the Department of State Division of Consumer Protection, the Attorney General's Office or any consuming reporting agencies of a breach of the information security system or concerning any determination to delay notification for law enforcement investigations.
- Contractor shall be responsible for providing all notices required by the ISBNA and for all costs associated with providing said notices.
- This policy and procedure shall not impair the ability of the Attorney General to bring an action against the Contractor to enforce all provisions of the ISBNA or limit the Contractor's liability for any violations of the ISBNA.

21. CONTRACTOR RESPONSIBILITY

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS or her designee, 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 or her designee, 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 or her designee issues a written notice authorizing a resumption of performance under 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 or her designee at the Contractor's expense where the Contractor is determined by the Commissioner of OGS or her designee to be non-responsible. In such event, the Commissioner of OGS or her designee 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.

SAMPLE

CONTRACT NO. C00XXXX

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Agency Certification
"In addition to the acceptance of this Contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract."

(**Company Name**)

THE PEOPLE OF THE STATE OF NEW YORK

By:_____
Name:
Title:
Federal I.D. No.:
Date:

By:_____
Name:
Title:
Date:

APPROVED AS TO FORM

APPROVED

Attorney General

State Comptroller

STATE OF)

SS.:

COUNTY OF)

On this_____day of _____, 20__ , before me personally came

_____ , to me known and known to me to be the person described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

_____

Notary Public

Registration No._____

State of:_____

SAMPLE

Sample Contract

Appendix A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

[Text not included at this time because it is included elsewhere in the solicitation. Will be added when contract is finalized]

SAMPLE

Sample Contract

Appendix B

Invitation for Bid

SAMPLE

Sample Contract

Appendix C

Contractor's Bid

SAMPLE

Appendix D – Insurance Requirements

Insurance Requirements

The Bidder shall be required to procure, at its sole cost and expense, all insurance required by this Attachment.

The Bidder shall be required to provide proof of compliance with the requirements of this Attachment, as follows:

- Proof of all insurance required by Section B below shall be provided in accordance with the provisions hereof;
- After award, the Contractor shall be required to provide proof of all insurance after renewal or upon request according to the timelines set forth in Section A.13 below.

Contractors shall be required to procure, at their sole cost and expense, and shall maintain in force at all times during the term of any Contract resulting from this Solicitation, policies of insurance as required by this Attachment. All insurance required by this Attachment shall be written by companies that have an A.M. Best Company rating of "A-," Class "VII" or better. In addition, companies writing insurance intended to comply with the requirements of this Attachment should be licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York. OGS may, in its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when certificates and/or other policy documents are accompanied by a completed Excess Lines Association of New York (ELANY) affidavit or other documents demonstrating the company's strong financial rating. If, during the term of a policy, the carrier's A.M. Best rating falls below "A-," Class "VII," the insurance must be replaced, on or before the renewal date of the policy, with insurance that meets the requirements above.

Bidders and Contractors shall deliver to OGS evidence of the insurance required by this Solicitation and any Contract resulting from this Solicitation in a form satisfactory to OGS. Policies must be written in accordance with the requirements of the paragraphs below, as applicable. While acceptance of insurance documentation shall not be unreasonably withheld, conditioned or delayed, acceptance and/or approval by OGS does not, and shall not be construed to, relieve Bidders or Contractors of any obligations, responsibilities or liabilities under this Solicitation or any Contract resulting from this Solicitation.

The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the term of the Contract.

A. General Conditions Applicable to Insurance. All policies of insurance required by this Solicitation or any Contract resulting from this Solicitation shall comply with the following requirements:

***1. Coverage Types and Policy Limits*.** The types of coverage and policy limits required from Bidders and Contractors are specified in Paragraph B *Insurance Requirements* below.

2. Policy Forms. Except as otherwise specifically provided herein, or agreed to in the Contract resulting from this Solicitation, all policies of insurance required by this Attachment shall be written on an occurrence basis.

3. Certificates of Insurance/Notices. Bidders and Contractors shall provide OGS with a Certificate or Certificates of Insurance, in a form satisfactory to OGS as detailed below, and pursuant to the timelines set forth in Section B below. Certificates shall reference the Solicitation or award number and shall name **The New York State Office of General Services, Agency Procurement Office, 32nd Floor, Corning Tower, Empire State Plaza, Albany, New York 12242** as the certificate holder.

Certificates of Insurance shall:

- Be in the form acceptable to OGS and in accordance with the New York State Insurance Law (e.g., an ACORD certificate);
- Disclose any deductible, self-insured retention, aggregate limit or exclusion to the policy that materially changes the coverage required by this Solicitation or any Contract resulting from this Solicitation;
- Be signed by an authorized representative of the referenced insurance carriers; and
- Contain the following language in the Description of Operations / Locations / Vehicles section of the Certificate or on a submitted endorsement: **Additional insured protection afforded is on a primary and non-contributory basis. A waiver of subrogation is granted in favor of the additional insureds.**

Only original documents (certificates of insurance and any endorsements and other attachments) or electronic versions of the same that can be directly traced back to the insurer, agent or broker via e-mail distribution or similar means will be accepted.

OGS generally requires Contractors to submit only certificates of insurance and additional insured endorsements, although OGS reserves the right to request other proof of insurance. Contractors should refrain from submitting entire insurance policies, unless specifically requested by OGS. If an entire insurance policy is submitted but not requested, OGS shall not be obligated to review and shall not be chargeable with knowledge of its contents. In addition, submission of an entire insurance policy not requested by OGS does not constitute proof of compliance with the insurance requirements and does not discharge Contractors from submitting the requested insurance documentation.

4. Primary Coverage. All liability insurance policies shall provide that the required coverage shall be primary and non-contributory to other insurance available to the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. Any other insurance maintained by the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees shall be excess of and shall not contribute with the Bidder/Contractor's insurance.

5. Breach for Lack of Proof of Coverage. The failure to comply with the requirements of this Attachment at any time during the term of the Contract shall be considered a breach of the terms of the Contract and shall allow the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees to avail themselves of all remedies available under the Contract or at law or in equity.

6. Self-Insured Retention/Deductibles. Certificates of Insurance must indicate the applicable deductibles/self-insured retentions for each listed policy. Deductibles or self-insured retentions above $100,000.00 are subject to approval from OGS. Such approval shall not be unreasonably withheld, conditioned or delayed. Bidders and Contractors shall be solely responsible for all claim expenses and loss payments within the deductibles or self-insured retentions. If the Bidder/Contractor is providing the required insurance through self-insurance, evidence of the financial capacity to support the self-insurance program along with a description of that program, including, but not limited to, information regarding the use of a third-party administrator shall be provided upon request.

7. Subcontractors. Prior to the commencement of any work by a Subcontractor, the Contractor shall require such Subcontractor to procure policies of insurance as required by this Attachment and maintain the same in force during the term of any work performed by that Subcontractor. An Additional Insured Endorsement CG 20 38 04 13 (or the equivalent) evidencing such coverage shall be provided to the Contractor prior to the commencement of any work by a subcontractor and pursuant to the timelines set forth in Section A.13. below, as applicable. For subcontractors that are self-insured, the subcontractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the subcontractor would have been required to pursuant to this section had the subcontractor obtained such insurance policies.

8. Waiver of Subrogation. For all liability policies and the workers' compensation insurance required below, the Bidder/Contractor shall cause to be included in its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees, or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if the Contractor waives or has waived before the casualty, the right of recovery against The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees or (ii) any other form of permission for the release of The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. A Waiver of Subrogation Endorsement shall be provided upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.

9. Additional Insured. The Contractor shall cause to be included in each of the liability policies required below for on-going and completed operations naming as additional insured (via ISO form CG 20 10 04 13 or CG 20 38 04 13 and CG 20 37 04 13 and form CA 20 48 10

13, or a form or forms that provide equivalent coverage): The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. An Additional Insured Endorsement evidencing such coverage shall be provided to OGS pursuant to the timelines set forth in Section B below. A blanket Additional Insured Endorsement evidencing such coverage is also acceptable. For Contractors who are self-insured, the Contractor shall be obligated to defend and indemnify the above-named additional insureds with respect to Commercial General Liability and Business Automobile Liability, in the same manner that the Contractor would have been required to pursuant to this Attachment had the Contractor obtained such insurance policies.

10. Excess/Umbrella Liability Policies. Required insurance coverage limits may be provided through a combination of primary and excess/umbrella liability policies. If coverage limits are provided through excess/umbrella liability policies, then a Schedule of underlying insurance listing policy information for all underlying insurance policies (insurer, policy number, policy term, coverage and limits of insurance), including proof that the excess/umbrella insurance follows form must be provided upon request.

11. Notice of Cancellation or Non-Renewal. Policies shall be written so as to include the requirements for notice of cancellation or non-renewal in accordance with the New York State Insurance Law. Within five (5) business days of receipt of any notice of cancellation or non-renewal of insurance, the Contractor shall provide OGS with a copy of any such notice received from an insurer together with proof of replacement coverage that complies with the insurance requirements of this Solicitation and any Contract resulting from this Solicitation.

12. Policy Renewal/Expiration Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the insurance requirements set forth in this Solicitation and any Contract resulting from this Solicitation shall be delivered to OGS. If, at any time during the term of any Contract resulting from this Solicitation, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in this Solicitation or any Contract resulting from this Solicitation, or proof thereof is not provided to OGS, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by OGS.

13. Deadlines for Providing Insurance Documents after Renewal or Upon Request. As set forth herein, certain insurance documents must be provided to the OGS Agency Procurement Office contact identified in the Contract Award Notice after renewal or upon request. This requirement means that the Contractor shall provide the applicable insurance document to OGS as soon as possible but in no event later than the following time periods:

- For certificates of insurance: 5 business days
- For information on self-insurance or self-retention programs: 15 calendar days
- For other requested documentation evidencing coverage: 15 calendar days
- For additional insured and waiver of subrogation endorsements: 30 calendar days

Notwithstanding the foregoing, if the Contractor shall have promptly requested the insurance documents from its broker or insurer and shall have thereafter diligently taken all steps necessary to obtain such documents from its insurer and submit them to OGS, OGS shall

extend the time period for a reasonable period under the circumstances, but in no event shall the extension exceed 30 calendar days.

B. Insurance Requirements

Bidders and Contractors shall obtain and maintain in full force and effect, throughout the term of any Contract resulting from this Solicitation, at their own expense, the following insurance with limits not less than those described below and as required by the terms of any Contract resulting from this Solicitation, or as required by law, whichever is greater:

Insurance Type		Proof of Coverage is Due
Commercial General Liability	$2,000,000 each occurrence	Upon notification of tentative award and updated in accordance with Contract
General Aggregate	$2,000,000	
Products – Completed Operations Aggregate	$2,000,000	
Personal and Advertising Injury	$1,000,000	
Medical Expenses Limit	$5,000	
Crime Insurance	$1,000,000	
Business Automobile Liability Insurance	$1,000,000 each occurrence	
Workers' Compensation		
Disability Benefits		

1. Commercial General Liability Insurance: Such liability shall be written on the current edition of ISO occurrence form CG 00 01, or a substitute form providing equivalent coverage.

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- General Aggregate
- Products – Completed Operations Aggregate
- Personal and Advertising Injury
- Each Occurrence

Coverage shall include, but not be limited to, the following:

- Premises liability arising from operations;
- Independent contractors;
- Blanket contractual liability, including tort liability of another assumed in a contract;
- Defense and/or indemnification obligations, including obligations assumed under the Contract;
- Cross liability for additional insureds; and
- Products/completed operations for a term of no less than one (1) year, commencing upon acceptance of the work, as required by the Contract.

2. Crime Insurance (Employee Dishonesty): If performance under this Contract shall require work on State property, the Contractor shall maintain, during the term of the

Contract, Crime Insurance on a "loss sustained form" or "loss discovered form," and coverage must include the following:

- The policy must allow for reporting of circumstances or incidents that might give rise to future claims.
- The policy must include an extended reporting period of no less than one year with respect to events which occurred but were not reported during the term of the policy.
- Any warranties required by the Contractor's insurer as a result of the Contract must be disclosed and complied with. Said insurance shall extend coverage to include the principals (all directors, officers, agents and employees) of the Contractor as a result of this Contract.
- The policy shall include coverage for third party fidelity and name "The People of the State of New York, the New York State Office of General Services, and their officers, agents, and employees" as "Loss Payees" for all third party coverage secured. This requirement applies to both primary and excess liability policies, as applicable.
- The policy shall not contain a condition requiring an arrest and conviction.

3. Business Automobile Liability Insurance: Such insurance shall cover liability arising out of automobiles used in connection with performance under the Contract, including owned, leased, hired and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear, license plates.

In the event that the Contractor does not own, lease or hire any automobiles used in connection with performance under the Contract, the Contractor does not need to obtain Business Automobile Liability Insurance, but must attest to the fact that the Contractor does not own, lease or hire any automobiles used in connection with performance under the Contract on a form provided by OGS. If, however, during the term of the Contract, the Contractor acquires, leases or hires any automobiles that will be used in connection with performance under the Contract, the Contractor must obtain Business Automobile Liability Insurance that meets all of the requirements of this section and provide proof of such coverage to OGS in accordance with the insurance requirements of any Contract resulting from this Solicitation.

4. Workers' Compensation Insurance and Disability Benefits Requirements

Sections 57 and 220 of the New York State Workers' Compensation Law require the heads of all municipal and state entities to ensure that businesses applying for contracts have appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals. **Failure to provide proper proof of such coverage or a legal exemption will result in a rejection of a Bid or any contract renewal. A Bidder will not be awarded a Contract unless proof of workers' compensation and disability insurance is provided to OGS.** Proof of workers' compensation and disability benefits coverage, or proof of exemption must be submitted to OGS at the time of notification of tentative award, policy renewal, contract renewal and upon request. Proof of compliance must be submitted on one of the following forms designated by the New York State Workers' Compensation Board. **An ACORD form is not acceptable proof of New York State workers' compensation or disability benefits insurance coverage.**

Proof of Compliance with Workers' Compensation Coverage Requirements:

- Form CE-200*, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required*, which is available on the Workers' Compensation Board's website (www.wcb.ny.gov);
- Form C-105.2 (9/15), *Certificate of Workers' Compensation Insurance*, sent to OGS by the Contractor's insurance carrier upon request, or if coverage is provided by the New York State Insurance Fund, they will provide Form U-26.3 to OGS upon request from the Contractor; or
- Form SI-12, *Certificate of Workers' Compensation Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance Office, or
- Form GSI-105.2, *Certificate of Participation in Workers' Compensation Group Self-Insurance*, available from the Contractor's Group Self-Insurance Administrator.

Proof of Compliance with Disability Benefits Coverage Requirements:

- Form CE-200, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required*, which is available on the Workers' Compensation Board's website (www.wcb.ny.gov);
- Form DB-120.1, Certificate of Disability Benefits Insurance, sent to OGS by the Contractor's insurance carrier upon request; or
- Form DB-155, Certificate of Disability Benefits Self-Insurance, available from the New York State Workers' Compensation Board's Self-Insurance Office.

An instruction manual clarifying the New York State Workers' Compensation Law requirements is available for download at the New York State Workers' Compensation Board's website, http://www.wcb.ny.gov. Once on the site, click on the Employers/Businesses tab and then click on Employers' Handbook.

Contractor acknowledges that failure to obtain and/or keep in effect any or all required insurance on behalf of OGS constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to OGS. Contractor's failure to obtain and/or keep in effect any or all required insurance shall also provide the basis for OGS' immediate termination of any contract resulting from this Solicitation, subject only to a five (5) business day cure period. Any termination by OGS under this section shall in no event constitute or be deemed a breach of any contract resulting from this Solicitation and no liability shall be incurred by or arise against the Office of General Services, its agents and employees therefore for lost profits or any other damages.

Appendix E – M/WBE and EEO Requirements

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/forms

ATTACHMENT 1 - BID PROPOSAL FORM

NYS Office of General Services
Financial Administration
32nd FL - Corning Tower, Empire State Plaza
Albany, NY 12242

CONTRACT NO._____
(to be completed by agency**)**

Contractor's Name_____

NOTE: This Bid Proposal Form must be completed and signed and submitted with (1) Original.

The above Contractor Agrees to provide all warehousing, storage, handling and delivery of USDA Food commodities in Region L – which includes the counties of: Cayuga, Onondaga, Ontario, Seneca, Wayne, and Yates in accordance with the specifications in this IFB for the prices bid below:

Item A: Cost per case for received, stored and delivered commodities (see Section 4.3 - Price):

	*# of Cases	**Est. #of Cases /Month	X	$ Amount/case	X	***# of months	Total
1)	1 to 99	1,400	X	$_____/case	X	10	= $_____
2)	100 to 199	1,900	X	$_____/case	X	10	= $_____
3)	200+ cases	2,000	X	$_____/case	X	10	= $_____

Total est. # of cases /mo = 5,300

A4) SUBTOTAL of A1 through A3 **= $_____**

Item B: Monthly Storage Cost per Case (for items exceeding 60 days - See Section 4.3 - Price)

1) Estimated 100 cases /mo (x) $_____/case = $_____/mo (x) 2 months

B1) Total = $_____

GRAND TOTAL ANNUAL BID (A4+ B1) = $_____

Prompt Payment discount, if offered: _____% / if paid within _____ days

_____
DATE

_____
SIGNATURE

_____
PRINT NAME / TITLE

* See Section 4.3 - Price
** Estimates are for bid evaluation purposes only.
*** The food distribution program is based on 10 months per year.

Attachment 2 - List of Recipients in Region L

RA Code:	District Name:	School/ Building Name:	Address:	City:	County (Ex. Essex):	Zip:
L001	Auburn Enlarged S.D.	Auburn High School	250 Lake Ave	Auburn	Cayuga	13021
L003	Jamesville-Dewitt CSD	JD High School	6845 Edinger Dr	Dewitt	Onondaga	13214
L004	EAST SYRACUSE MINOA	EAST SYRACUSE MINOA CENTRAL HIGH SCHOOL	6400 FREMONT ROAD	EAST SYRACUSE	ONONDAGA	13057
L005	Fabius Pompey	Fabius Pompey Elementary	7800 Main St	Fabius	Onondaga	13063
L006	Marcellus Central School District	Marcellus Senior High School	1 Mustang Hill	Marcellus	Onondaga	13108
L007	Baldwinsville Central School District	Donald S Ray Middle School	7650 VAN BUREN RD	BALDWINSVILLE	Onondaga	13027
L009	LaFayette Central School	Jr/Sr High School	3122 Rt 11 North	LaFayette	Onondaga	13084
L010	Canandaigua City School	Canandaigua Primary/Elementary School	90 West Gibson Street	Canandaigua	Ontario	14469
L010	Canandaigua City schools	Canandaigua Middle School	215 Granger Street	Canandaigua	Ontario	14424
L010	Canandaigua City School	Canandaigua Academy	435 East Street	Canandaigua	Ontario	14424
L011	Cato-Meridian CSD	Elementary	2851 Route 370	CATO	Cayuga	13033
L012	Fayetteville Manlius CSD	High School/House 1 (central kitchen)	8201 East Seneca St.	Manlius	Onondaga	13104
L014	Liverpool Central School District	E.C.C. Warehouse	Hickory and Seventh Street	Liverpool	Onondaga	13088
L015	Dundee Central School	Dundee Central School	55 Water Street	Dundee	Yates	14837
L016	Bloomfield Central School	Bloomfield Elementary school	45 Maple Avenue	Bloomfield	Ontario	14469
L016	Bloomfield Central School	Bloomfield Middle/High School	1 Oakmount Avenue	Bloomfield	Ontario	14469
L017	Geneva City School District	Geneva Schools Food Service Dept./District Central Services Facility	335 Gambee Road	Geneva	Ontario	14456
L018	Cathedral Academy at Pompei	Cathedral Academy at Pompei	923 North McBride Street	Syracuse	Onondaga	13208
L019	Southern Cayuga CSD	Cayuga Jr/Sr High School	2384 Route 34B	Aurora	Cayuga	13026
L020	Marcus Whitman	Marcus Whitman High School	4100 Baldwin Road	Rushville	Yates	14544
L022	Honeoye Central School	Honeoye Central School	8528 Main Street	Honeoye	Ontario	14471
L023	Syracuse City School District	Shea Middle School	1607 Geddes Street	Syracuse NY	Onondaga	13207
L023	Syracuse City School District	Americold Logistics	264 Farrell Rd.	Syracuse	Onondaga	13209
L024	Westhill CSD	Westhill High School	4501 Onondaga Blvd	Syracuse	Onondaga	13219
L026	Lyons Central	Lyons Middle School/High School	10 clyde rd	lyons	Wayne	14489
L026	Lyons Central	Lyons Elementary School	98 William St.	Lyons	Wayne	14489
L027	Manchester-Shortsville CSD	Red Jacket	1506 state route 21	shortsville	Ontario	14548
L028	Marion Central School	Marion Jr- Sr High School	4034 Warner Road	Marion	Wayne	14505
L028	Marion Central School	Marion Elemetary School	North Main Street	Marion	Wayne	14505
L029	Moravia CSD	Moravia Middle/High School	68 S. Main Street	Moravia	Cayuga	13118
L030	Naples	Middle/High School	136 North Main Street	Naples	Ontario	14512
L030	Naples	Elementary	2 Academy Street	Naples	Ontario	14512
L031	Newark Central School	Newark high School	725 Peirson Ave	Newark	Wayne	14505
L031	Newark Certral School	Newark Middle School	625 Peirson Ave	Newark	Wayne	14505
L033	Wayne Central School District	Wayne Central Middle School	6076 Ontario Center Rd	Ontario	Wayne	14519
L034	South Seneca	Middle/High School	7263 Main St	Ovid	Seneca	14521
L034	South Seneca	Elementary	8326 Main St	Interlaken	Seneca	14847
L035	Palmyra Macedon Central School	Pal-Mac High School	151 Hyde Parkway	Palmyra	Wayne	14522
L036	Penn Yan CSD	Penn Yan Elementary	3 School Drive Drive	Penn Yan	Yates	14527
L037	Midlakes-Phelps Clifton-Springs	High School	1554 RTE 488	Clifton Springs	Ontario	14432
L037	Midlakes-Phelps Clifton-Springs	Elementary School	1554 RTE 488	Clifton Springs	New York (NY)	14532
L038	Port Byron CSD	Port Byron CSD/Athletic Drive (actual delivery site)	30 Maple Ave	Port Byron	Cayuga	13140
L039	Red Creek Central School	Red Creek Jr-Sr High School	6574 South Street	Red Creek	Wayne	13143
L039	Red Creek School	Red Creek Jr-Sr High School	6574 South St	Red Creek	Wayne	13143
L040	Romulus CSD	Romulus CSD	5705 Main Street	Romulus	Seneca	14541
L043	Seneca Falls CSD	Mynderse Academy	105 Troy Street	Seneca Falls	Seneca	13148
L044	Skaneateles CSD	Middle School	35 East street	Skaneateles	Onondaga	13152

Attachment 2 - List of Recipients in Region L

L045	Sodus SCD	Elementary School	6264 State Route 88	Sodus	Wayne	14551
L045	Sodus CSD	Sodus Cold Storage	50 Maple Ave.	Sodus	NY	14551
L047	Union springs central school	Union springs high school	239 Cayuga street	Union springs	Cayuga	13160
L048	Victor Central School	Victor High School	953 High Street	Victor	Ontario	14564
L049	WATERLOO CENTRAL SCHOOL DISTRICT	WATERLOO SENIOR HIGH SCHOOL	96 Stark Street	Waterloo	Seneca	13165
L050	Weedsport	Weedsport Jr.Sr. High School	2821 E. Brutus St	Weedsport	Cayuga	13166
L051	Williamson Central School District	Williamson High School	5891 Rt 21, South	WILLIAMSON	Wayne	14589
L051	Williamson Central School District	Williamson Elementary School	6036 Highland Avene	Williamson	Wayne	14589
L051	Williamson Central School District	Williamson Middle School	4184 Miller St	Williamson	Wayne	14589
L052	North Rose Wolcott	North Rose Wolcott Elementary School	10456 Salter Road	North Rose	Wayne	14516
L052	North Rose Wolcott	North Rose Wolcott Middle School	5957 New Hartford Street	Wolcott	Wayne	14590
L052	North Rose Wolcott	North Rose Wolcott High School	11631 Salter Colvin Road	Wolcott	Wayne	14590
L054	Tully CSD	Jr/Sr High School	20 State St	Tully	Onondaga	13159
L055	Clyde Savannah Central School District	Clyde Savannah Middle/High School	215 Glasgow Street	Clyde	Wayne	14433
L055	Clyde Savannah	Clyde Savannah Elementary	212 E. DeZeng Street	Clyde	Wayne	14433
L056	West Genesee CSD	West Genesee High School	5201 West Genesee St	Camillus	Onondaga	13031
L057	Jordan Elbridge CSD	Jordan Elbridge High School	5721 Hamilton Rd	Jordan	Onondaga	13080
L057	Jordan Elbridge CSD	Jordan Elbridge Middle School	9 Chappell St.	Jordan	Onondaga	13080
L057	Jordan Elbridge CSD	Elbridge Elementary School	130 E. Main St.	Elbridge	Onondaga	13080
L060	Solvay UFSD	Solvay High School	600 Gertrude Ave	Solvay	Onondaga	13209
L061	Gananda Central School District	Gananda Central School District	3195 Wiedrick Road	Walworth	Monroe	14568
L062	Bishop Ludden High School	Bishop Luddden HighSchool	815 Fay Road	Syracuse	Onondaga	13219
L062	Cathedral @ Pompei	Cathedral @ Pompei	923 North Mcbride street	Syracuse	Onondaga	13208
L069	WAYNE COUNTY ARC ROOSEVELT CHILDREN CENTER	WAYNE COUNTY ARC ROOSEVELT CHILDREN CENTER	848 PEIRSON AV.	NEWARK	WAYNE	14513
L074	Syracuse Academy of Science Charter School	Syracuse Academy of Science High School	1001 Park Ave	Syracuse	Onondaga	13204
L074	Utica Academy of Science	Utica Academy of Science High School	160 School Lane	Frankfort	Herkimer	13340
L087	Lyncourt UFSD	Lyncourt	2707 Court Street	SYRACUSE	Onondaga	13208
L088	North Syracuse Central School District	North Syacuse Transportation Building	5520A East Taft Road	North Syracuse	Onondaga	13212
L397	Elmcrest Children's Center	Elmcrest Children's Center	960 Salt Springs Road	Syracuse	Onondaga	13224
L406	Cayuga Action Program	Cayuga County Action Program	1 Brookfield Place	Auburn	Cayuga	13021
L410	Coordinated Child Development Program, Inc.	Our Children's Place	55 Wilcox lane	Canandaigua	Broome	14424
L414	Community Covenant Church	Sonshine Child Care	107 Pleasant Street	Manlius	Broome	13104
L415	Geneva Lakefront Childcare Center	Geneva Lakefront Childcare Center	61 Elizabeth Blackwell STreet	Geneva	Ontario	14456
L418	Creative Environment Day Care Inc.	Creative Environment Children's Learning Center	28 Main St	Macedon	Wayne	14502

Attachment 3 - Facility Inspection Form

NEW YORK STATE OF OPPORTUNITY.

Office of General Services
Food Distribution

Office of General Services
Food Distribution
Room 2978, Corning Tower
Empire State Plaza
Albany, NY 12242
(518) 474-5122
ogsdonatedfoods@ogs.ny.gov

USDA Storage Facility Review

Instructions:
United States Department of Agriculture (USDA) regulations, 7 Code of Federal Regulations, Part 250.14, require that all agencies participating in the donated food program conduct an annual review of all storage facilities. Any item(s) below checked "no" must be corrected a report of corrective action(s) must be returned to OGS within 5 business days.

Facility Name	**Date of Review**
Facility Address	**Reviewer**
Location Where Food is Stored	**Name of FB**

		Yes	No	Comments		
1	Is storage facility well maintained to insure safety and sanitation?					
2	Is space adequate and in good repair?					
3	Is there adequate ventilation?					
4	Is storage area secure from theft?					
5	Are foods stored separately from pesticides, herbicides, cleaning solvents, lubricants, or other materials that could contaminate the foods?					
6	Is storage area free of rodent and insect infestation?					
7	Is facility exterminated regularly?			**Enter Log Date Inspected & Company Name**		
8	Are foods palletized and/or on shelves?					
9	Is first-in/first-out method used?					
10	Are damaged products disposed of property?					
11	Record Current Temperature in:	n/a	n/a	**Freezer (0° or below)**	**Cooler (35°-45°)**	**Dry (50°-70°)**
12	If applicable, is the freezer's internal temperature checked and recorded 7 out of 7 days?			**Log Manual Electronic**		
13	If applicable, is the cooler's internal temperature checked and recorded 7 out of 7 days?					
14	Though not required, is the dry storage temperature checked and recorded 7 out of 7 days? (50°-70°)					
15	Is a current Ag & Markets license on file?			**Enter Expiration Date**		

Note: Individual forms should be completed on each location where food is stored.