

GENERAL INFORMATION

1. SCOPE:

1.1 The BOCES, School Districts, and counties (the Group) have agreed to form a Cooperative Bid Group as authorized by General Municipal Law Section 119-o. It is the intent of the Group to contract with vendor(s) and establish prices for these items for the state contract term. Notwithstanding the details presented in the specifications, it shall be the responsibility of the bidder to verify the completeness of same to meet the intent of the specifications; it being understood that a complete reliable supply of **Bread & Bread Products**, satisfactory to each user, shall be required in all cases.

1.2. The Participants reserve the right to add to, or remove from, the contract at any time using Organizations, Departments, Agencies and School Districts.

2. AMENDMENTS TO BID:

Any verbal information obtained from or statements made by representatives of Wayne-Finger Lakes BOCES at the time of examination of the documents or site shall not be construed as, in any way, amending contract documents. Only such corrections or addenda as are used by the BOCES in writing to all Contracts shall become a part of the Contract. Any addendum issued during the time of bidding shall be included in bids and become a part of the Contract Agreement.

3. RESPONSIBILITY OF CONTRACTOR:

The contractor shall be responsible for providing, delivering and inspecting all materials ordered as a result of this bid. The contractor is responsible for following all instructions as described in this document.

4. BOCES' RESPONSIBILITY:

Although this bid was issued, evaluated, and awarded by the Wayne-Finger Lakes BOCES at the request of itself and participating school districts, BOCES' liability under contract is limited to coordination and BOCES issued purchase orders only. Districts are required to generate their own purchase orders (to the successful vendors) in accordance with the bid provisions and the attached schedule of awards.

5. PARTICIPANTS' RESPONSIBILITY:

Purchase Orders will be issued to the designated vendor(s) by the participating school districts and/or Agencies listed, authorized in accordance with established Municipal Accounting Practices. Those participants are solely responsible in contract for obligations entered into with the vendors.

6. CONTRACT TERM:

The contract resulting from this bid shall remain in effect from September 1, 2019 to August 31, 2020. The contract may be extended for two (2) 1-year terms upon mutual agreement of the contracting parties.

7. SHORT TERM EXTENSION:

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

period of up to three months in lieu of one month. However, this extension terminates should the replacement contract be issued in the interim.

8. QUANTITIES:

The quantities indicated in the specifications represent estimated total requirements for the contract term. The totals are estimates ONLY and should not be construed to represent either maximum or minimum amounts to be purchased during the contract term.

9. OTHER CONTRACTS:

The Participant(s) reserves the right to purchase goods and services from any avenue legally available by NYS law throughout the duration of any contract resulting from this bid.

10. MINIMUM ACCEPTABLE STANDARDS:

As described in the bid forms.

11. BIDDER QUALIFICATIONS:

11.1 In order to be considered responsive, a bidder must demonstrate that, immediately upon award of contract, the bidder is capable of meeting the terms and conditions of this contract. By submitting a bid, a bidder acknowledges and accepts the right of the Participants, at their sole discretion, to apply whatever criteria they deem to be reasonable in determining whether or not a bidder has demonstrated its capability of meeting the terms and conditions of this contract.

11.2 In addition to the requirements of the General Conditions, each successful bidder must be able to provide the Participants, upon request, sufficient evidence that the bidder can be reasonably expected to meet the requirements of this contract. Specifically, any bidder must provide evidence of a multi-year track record of having met the needs of customers of the size and complexity of the Participants.

11.3 Each successful bidder must be able to demonstrate the experience, financial stability, personnel, stock, plan capacity and systems requirements to perform this contract. Major criteria to be considered in evaluating these factors are:

1. Demonstration of stocking, warehousing, and ordering capability. Sufficient stock on hand to handle routine quantities of orders.
2. Demonstration of order taking and tracking capability. The bidder must have a system in place to efficiently and correctly handle multiple large orders from separate accounts.
3. Demonstration of delivery capability, i.e., and ability to provide separate delivery to each separate account within the time frames specified.
4. Demonstration of billing systems to insure smooth, correct and efficient billing to as many separate accounts as are established.
5. Demonstrate sufficient sales staff to receive orders and handle problems as on site sales calls to schools as required.

11.4 A bidder must supply, within three (3) days of request, any information requested by the Participants as part of its review of qualifications.

12. IRAN DIVESTMENT ACT:

12.1 By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, Bidder/Contractor (or any assignee) certifies that it is not on the "Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2013" list ("Prohibited Entities List") posted on the OGS website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on such Contract any subcontractor that is identified on the Prohibited Entities List. Additionally, Bidder/Contractor is advised that should it seek to renew or extend a Contract awarded in response to the solicitation, it must provide the same certification at the time the Contract is renewed or extended.

12.2 During the term of the Contract, should BOCES receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, BOCES 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 BOCES shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default.

13. BID ITEMS:

13.1 For the items specified in all Groups, the words "or equal" are understood after each item. The decision of the Bid Committee as to whether an alternate or substitution is in fact "equal" shall be final. All bidders are to identify the brand, specifications, weight and number of items per package, label standards and any variance on all items bid. If no description or alternate item information accompanies the bid, it will be assumed the bidder will furnish the item exactly as listed on the bid proposal form specifications. Items must be clearly labeled as to item and weight and packaged to assure adequate protection from dirt, moisture or other contaminants.

13.2 All finished products shall be of good color and flavor. When it becomes necessary to furnish a portion of the requirements from reserve stock held in the vendor's freezer; such products must have been baked within 48 hours of the delivery time. Such products must meet the same standards of freshness.

13.3 Where a deviation or exception must be taken by the vendor to any part of the proposal, vendor must fully provide by attached letter a detailed explanation of exception. In the absence of a written exception or deviation, vendor agrees to fully comply with all conditions and specifications of the proposal.

13.4 Failure to submit the required data for each item will be considered sufficient reason for rejection of the item(s) bid. The brand "Packer" will not be considered as a suitable brand for the products specified.

13.5 Every effort has been made to include all items that may be required during the contract term. If, however, items are required which are not listed in this bid, the BOCES reserves the right to negotiate with the vendor a mutually agreeable cost for items not specified. The BOCES and the Participants further reserves the right to obtain these items from other sources if the cost cannot be mutually agreed upon.

14. SPECIFICATION REFERENCES:

14.1 The Participants have determined that the manufacturers listed (model names or numbers used) are preferred. This manufacturer's reference is not intended to be restrictive but descriptive of the type and quality that the Participants' desire to purchase. Bids for similar manufactured items of like quality will be considered if the bid is fully noted with the manufacturer's brand name and model. The Bid Committee reserves the right to determine products of equal value. The decision of the Bid Committee will be final as to acceptable alternates. **Vendors will not be allowed to make unauthorized substitutions after award is made.**

14.2 If the item or items called for in these specifications are delivered and fail to meet specifications in any respect, the bidder will be notified and he will arrange for their removal from the Participant's property at no expense to the Participant. If successful bidder fails to remove the items, which, in the opinion of the Bid Committee, do not meet specifications, the Participant will arrange to have such items removed and any expense connected therewith will be the responsibility of the successful bidder.

15. PACKAGING:

15.1 All bread products shall be wrapped in moisture-vapor resistant packaging in accordance with commercial practice for the industry. Vendor must take all precautions to prevent crushing of bread and rolls. Packaging is to assure adequate protection from any form of contamination.

15.2 The vendor is required to provide each Participant with a written explanation of any date coding used on packaging of all bread products furnished and the significance of the date or code as it relates to date of actual baking.

16. SAMPLES:

The Group may request a representative sample of items bid at the time of bid opening to be provided prior to the award of the bid. Individual participants may request samples of items prior to ordering. Samples are to be provided from regular production runs.

17. COMPLIANCE & NON-ASSIGNMENT:

17.1 Products delivered must be produced in the successful bidder's own plant(s) which are in full compliance with the Federal Pure Food and Drug Act; State and County health codes in the geographic location of the producing plant as related to the production, handling, distribution of baked goods. Plant and facilities shall be subject to inspection by representatives of the USDA, the State of New York, or the Participants.

17.2 It is understood and agreed that the bidder(s) shall not assign, transfer, convey, subcontract, or otherwise dispose of the contract of his/her right, title, or interest therein, or his/her power to execute such contract, to any other person, company, or corporation, without the prior written consent of the Bid Committee.

18. NON-COMPLIANCE:

Finished products that fail to meet the specifications of this contract shall be rejected. The vendor will be notified by telephone and replacement requested. If the vendor is unable to replace the rejected quantities within sufficient time to meet the Participant's schedule, the Participant shall have the right to purchase the rejected item on the open market and charge the difference in cost to the vendor.

19. GOVERNMENT COMMODITIES:

This bid is predicted on the use of vendor's own commodities. In the event that government flour or other ingredients become available, the vendor shall accept such commodities and credit the school districts with the value of such ingredients, based on vendor's most recent invoices for purchases of same ingredients.

20. REGULATIONS:

All products must meet all applicable Local, State and Federal regulations.

21. OBLIGATION OF BIDDERS:

At the time of the opening of the bids, each bidder will be presumed to have read and be thoroughly familiar with the contract documents. The failure or omission of any bidder to receive or examine any form, instrument, or document shall in no way relieve any bidder from any obligation in respect to the submitted bid.

22. BID FORMAT:

The bidder shall insert the *unit weight, package size, the per item price, and any brand information*. Bidders are directed to bid all items that they are able to supply as indicated on the bid proposal form. If not bidding an item or items mark N/A in appropriate place(s).

23. TIEBREAKING:

23.1 In the event that BOCES receives two or more low responsive and responsible tie bids for a solicitation, BOCES shall use the recognized "lottery method" to break the tie bid to determine the awardee. Supplier early payment discounts shall not be used in determining the low bidder.

23.2 All bidders that participated in the solicitation shall be notified by email of the tie bid and shall be invited to publicly witness the breaking of the tie bid in the BOCES Business Office. Those bidders shall be asked to respond back, via email, to the agency regarding their intention to witness this event.

23.3 The "lottery method" is based on a random selection drawing of a name from the pool of tie bidders. Pieces of paper (buyer's business card, etc.) with one tie bidder's name per piece of paper shall be put into a container and either the buyer or another designated agency staff member will draw one lot with the winning tie bidder's name. At least two BOCES' staff members shall be required to witness this lottery drawing.

24. OTHER CONTRACTS:

The Participant(s) reserve the right to purchase goods and services from any avenue legally available by NYS law through out the duration of any contract resulting from this bid.

25. NUTRIENT DATA REQUIREMENTS:

25.1 Nutrient data must be supplied by the food manufacturers, food distributors, or food brokers for food items that are offered in schools which do not appear in the *National Nutrient Database for Child Nutrition Program (NNDCP)*.

25.2 Appendix A provides information on submitting the required data and a sample "Data Submission Form". All required Data Submission Forms must be submitted to Participants prior to the delivery of any products, and no later than September 1, 2019.

26. PLACEMENT OF ORDERS:

26.1 Orders are to be placed a minimum of two days in advance of the scheduled delivery day. In the event of a change in order, the vendor will be notified no later than 4:00 PM preceding the day of delivery.

26.2 When a non-scheduled Participant's closing occurs and the Participant(s) cannot notify the vendor before the delivery begins, or in the event the vendor is informed the morning of delivery, the Participant shall accept and store the order, contingent of available personnel and sufficient freezer space. If this is not possible, the Participant(s) will advise the vendor as soon as possible.

26.3 Note: A vendor request that orders be placed more than four (4) days in advance of delivery date may result in rejection of bid.

27. USAGE REPORTS:

Each contractor must provide, upon request of the Participant(s), a complete listing of all items delivered to the Participant(s) during the contract term. Included in the listing must be sufficient description of the item, the item cost and the date of delivery. Contractor must be able to sort reports by manufacturer. Like items shall have a summary total given for the referenced time period.

28. CANCELLATION CLAUSE:

The Participants reserve the right to cancel the contract at any time during the contract term upon thirty (30) days written notice of cancellation mailed to the address of the vendor(s).

29. TERMINATION CLAUSE:

Wayne-Finger Lakes BOCES reserves the right to terminate any contract resulting from this bid with (10) ten-calendar days written notice to the vendor. The BOCES agrees to show cause and allow the vendor the opportunity to rectify problems. However, if in the sole opinion of the BOCES, the vendor has not resolved the problem to the satisfaction of the Participant(s) in a timely and workman like manner, said contract shall be terminated and the vendor agrees to remove said equipment from Participant's property within seven (7) calendar days and refund the Participant(s) in full for the equipment within that same timeframe.

30. DELIVERY REQUIREMENTS:

30.1 Prices are to be FOB each school/agency building location in each district/agency participating in the bid. Deliveries are to be made to each school/agency building location up to twice each week (Monday-Friday) as required by each participant. The successful bidder(s), upon notice, shall coordinate delivery schedules to specific sites of all participating school districts and agencies. Bidders are expected to bid based on the stated delivery requirements.

30.2 Changes can be made only with the written consent of an authorized representative of the Participants. It is understood that deliveries shall not be left outside of building unless previously approved by the school/agency's Food Service Director.

30.3 The vendor may use a disposable or non-disposable type of delivery container. Such containers shall be of stack type for convenience of storage. Vendor is required to remove all empty containers on next delivery date. Container must be properly designed and constructed to prevent spillage of contents.

30.4 A delivery receipt must accompany daily deliveries. All such receipts must be signed and dated by an authorized representative of the Participant. Deliveries made to sites not designated

on the delivery schedule, or without a signed delivery ticket, shall be considered as non-delivery. The vendor is responsible for providing a monthly statement to the Participant and is to include the total units of each item, unit costs and dollar extensions. This statement must be rendered to the Participants as soon as possible following the final delivery of the month.

31. GOVERNING LAW:

Any dispute arising under this Contract shall be governed by the laws of the State of New York, County of Wayne, Town of Arcadia. Any litigation under this Contract if commenced by Contractor shall be brought in a Court of competent jurisdiction in the State of New York. However, if the issue in dispute is not covered by the New York law or if there is a conflict between New York law and Federal law, i.e., decisions of the Federal courts, regulations and statues, the New York court shall apply the Federal law. Pending the resolution of any dispute, the Contractor shall proceed as directed by BOCES in writing.

32. JUDGMENTS/LEGAL FINDINGS:

By submitting this bid for consideration, the vendor affirms that they currently have no judgments or other legal findings nor have any pending judgments or other legal findings against the company or any of its executives, with any federal, state or local government entities that in any way could impact or have potential to impact their ability to complete any contract awarded them as a result of this bid. Failure to disclose any such judgments and/or findings will result in the termination or any contracts and other penalties as deemed legal and appropriate by the BOCES or Participant(s).

33. NEW YORK STATE SEXUAL HARASSMENT LAWS:

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 NYS labor law. A model policy and training has been created by the NYS Department of Labor and can be found here: <https://www.ny.gov/programs/combating-sexual-harassment-workplace>.

34. FORCE MAJEURE:

The Contractor shall not be held responsible for any losses resulting if the fulfillment of the terms of the contract shall be delayed or prevented by wars, acts of public enemies, strikes, fires, floods, or acts of God, or for any other acts not within the control of the Contractor and which by the exercise of reasonable diligence he is unable to prevent.

35. DISCREPANCY:

In the event of any discrepancy, disagreement or ambiguity among the documents which comprise this Bid and the Vendor's Bid, the documents shall be given preference in the following order to interpret and to resolve such discrepancy, disagreement or ambiguity; 1) the Bid Document; 2) the Vendor's proposal or bid.

36. NO ARBITRATION:

Disputes involving this contract including breach or alleged breach thereof, may not be submitted to binding arbitration, but must, instead, be heard in a court of competent jurisdiction of the State of New York.

37. EXECUTORY CLAUSE:

The Contractor specifically agrees that this contract shall be deemed executory only to the extent of monies available and no liability shall be incurred by BOCES or the Participants beyond the monies available for this contract.

38. EXCEPTIONS:

Any exceptions to this bid must be in writing and written on the Questionnaire Form.

39. COMPLAINTS:

Both Participants and Vendor(s) shall submit all complaints in writing to:

Wayne-Finger Lakes BOCES Business Office
Attn.: Lisa Parkison, CPPB, Purchasing Director
131 Drumlin Court
Newark, NY 14513-1863

Within four (4) days of occurrence. The Coordinator will maintain a file of all complaints that are submitted from both the Participants and the Vendor(s).

The BOCES reserves the right to reject any or all bids or to accept any proposal, which in the opinion of the BOCES is in the best interest of the Participants.