

GENERAL INFORMATION

1. SCOPE:

1.1 The Wayne-Finger Lakes BOCES and Participants require **COOPERATIVE GROCERY ITEMS**. The BOCES and Participants have agreed to form a Cooperative Bid Group as authorized by General Municipal Law Section 119-o. It is the intent of the Cooperative Bid Group (hereinafter referred to as "Participants") to contract with vendor(s) and to establish prices for these items for the stated contract term. Notwithstanding the details presented in the specifications, it being understood that a complete reliable supply of **COOPERATIVE GROCERY ITEMS** satisfactory to each participant 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. DESCRIPTION OF BOCES:

3.1 The Board of Cooperative Educational Services (BOCES) was created by New York State legislation in 1948. Today, there are thirty-eight organizations in the State. Each has its own governing board, elected by members of the Boards of Education of the component districts. The primary purpose of the BOCES is to provide services to two or more member districts more effectively and economically than one district could provide alone. Each year, the component districts request the services they want their BOCES to provide in the following year. The various requests for services and programs are assembled into an operating plan along with the associated budget. The State Department is required to approve all services before they can be provided to districts. Legal contracts are drawn up and approved by the district, the individual BOCES and the Commissioner of Education.

3.2 BOCES is an educational agency of the State, and must, therefore, adhere to all laws and regulations of the State of New York, which govern the public schools in the State, as well as regulations controlling the BOCES. BOCES receives most of its money from the member districts. In return, the member districts receive BOCES aid based on their relative wealth and need for the service. The various BOCES operate many programs. Generally, the largest programs are associated with Career & Technical and Special Education.

3.3 Wayne-Finger Lakes BOCES covers a four county region and supports 25 component school districts. Students served by BOCES are provided instructional programs including Career and Technical education, programs for children with handicapping conditions, and Adult Education.

4. 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.

5. 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.

6. BOCES' RESPONSIBILITY:

Although this bid was issued, evaluated, and awarded by the Wayne-Finger Lakes BOCES at the request of itself and participants, 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.

7. PARTICIPANTS' RESPONSIBILITY:

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

8. CONTRACT TERM:

The contract resulting from this bid invitation shall remain in effect from August 1, 2022 to January 31, 2023. The contract may be extended for one (1) six-month term or less upon mutual agreement of the contracting parties.

9. 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.

10. QUANTITIES:

The annual usage 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. Therefore, the contract is only for quantities actually ordered.

11. 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.

12. UNANTICIPATED REQUIREMENTS:

12.1 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 on the Proposal, the BOCES reserves the right to negotiate with the vendor a mutually agreeable cost for the items not specified to the extent permitted by General Municipal Law Section 103 and other applicable law. Any such items must be approved in writing by the BOCES prior to the contractor providing the items. Upon approval, these items will be added to the contract under the same terms and conditions. The BOCES further reserves the right to obtain these items from other sources if the cost cannot be mutually agreed upon, or if purchase of the items is subject to competitive bidding requirements.

12.2 The BOCES further reserves the right to purchase through the competitive bidding process, unanticipated large volume requirements, whether or not listed on the Proposal, if the BOCES concludes that prices or other considerations will result in terms which will be more favorable to the participants.

13. BIDDER QUALIFICATIONS:

13.1 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.

13.2 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.

13.3 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 of all Participants as required.

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

13.5 The successful bidder must supply copies of catalog(s)/price list(s) bid to all Participants.

14. IRAN DIVESTMENT ACT:

14.1 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/reg/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.

14.2 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.

14.3 BOCES 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.

15. BUY AMERICAN PROVISION:

15.1 Section 104(d) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Public Law 105-336) added a provision, Section 12(n) to the NSLA (42 USC 1760(n)), requiring school food authorities (SFA's) to purchase, to the maximum extent practicable, domestic commodity of products. Section 12(n) of the NSLA defines "domestic commodity or product" as an agricultural commodity that is produced in the United States and a food product that is processed in the United States using substantial agricultural commodities that are produced in the United States. "Substantial" means that over 51% of the final product consists of agricultural commodities that were grown domestically. Products from Guam, American Samoa, Virgin Islands, Puerto Rico and Northern Mariana Islands are allowed under this provision as territories of the United States. The Buy American provision (7 CFR Part 210.21(d)) is one of the procurement standards SFA's must comply with when purchasing commercial food products served in the school meal programs.

15.2 LIMITED EXCEPTIONS TO THE BUY AMERICA PROVISION:

There are limited exceptions to the Buy American provision which allow for the purchase of foods not meeting the "domestic" standard as described above (i.e., "non-domestic") in circumstances when use of domestic foods is truly not practicable. These exceptions, as determined by the SFA, are:

- The product is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality; or
- Competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product.

15.3 Should the vendor request an exception to the buy America provision, it is the vendors responsibility to provide sufficient evidence that the product in question does not exist in any form that would comply with the provision. Should the BOCES determine that the evidence supplied by the vendor does not meet the requirements for an exception, the vendor will be required to supply the appropriate produce or be deemed nonresponsive to the bid or contract.

15.4 BOCES 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.

16. MWBE: §200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.

(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

17. BID FORMAT:

The bidder shall insert the unit price, the extended price, and any brand, quantity and/or size variance from the specified product on the bid forms enclosed for each item he/she proposes to furnish. In the event of a discrepancy between the unit price and any extension or bid total, the unit price will govern. If not bidding an item or items, mark N/A in appropriate place(s), do not leave any blanks.

18. REGULATIONS:

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

19. SPECIFICATION REFERENCES:

19.1 For the items specified, the words "or equal" are understood after each item. 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.

19.2 The Participants have determined that if manufacturers are listed (model names or numbers used) in the specifications, those listed 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.

19.3 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.

19.4 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.

19.5 In addition, during the term of the contract, the Participants reserve the right to delete item(s) or add comparable item(s) to the list, at prices to be negotiated with the contractor.

20. TAX EXEMPT STATUS:

No charge will be allowed for federal, state or municipal sales and excise taxes for which the Participants are exempt. The price shall be the net delivered price, including all discounts, and shall not include any charges taxes or fees.

21. CANCELLATION CLAUSE:

The Participants reserve the right to cancel the contract at any time during the contract term upon ten (10) days written notice of cancellation mailed to the address of the vendor(s).

22. TERMINATION CLAUSE:

Wayne-Finger Lakes BOCES reserves the right to terminate any contract resulting from this bid with or without cause upon (10) ten-calendar days written notice to the vendor. Upon such written notice, 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.

23. NON-ASSIGNMENT:

It is mutually understood and agreed that the vendor shall not assign, transfer, convey, sublet, or otherwise dispose of the Contract or his right, title, or interest therein, or his power to execute such Contract, to any other person, company, or corporation, without the previous written consent of the BOCES.

24. 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, County of Wayne.

Pending the resolution of any dispute, the Contractor shall proceed as directed by BOCES in writing.

25. 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.

26. 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>

27. 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. This section shall not be construed to relieve Contractor from liability caused by the negligence or willful misconduct of Contractor, its officers, employees, or agents.

28. 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.

29. 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, County of Wayne.

30. 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.

31. EXCEPTIONS:

Where a deviation or exception to this bid by the bidder to any part of this proposal, bidder must fully provide by a detailed explanation of exception on the Questionnaire Form. In the absence of a written exception or deviation, vendor agrees to fully comply with all conditions and specifications of the proposal.

32. INDEMNIFICATION:

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Participants from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out or resulting from performance of contracted services, provided that such claim, damage, loss, or expense is attributed in whole or in part by negligent acts or omissions of the Contractor, his subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

33. ORDER OF PRECEDENCE:

Should a contradiction appear within this bid document, the following order of precedence shall prevail:

1. Bid Terms and Conditions
2. Bid Specifications
3. General Conditions
4. Purchase Order Conditions

SPECIFICATIONS

Through this Request for Bids, the Wayne-Finger Lakes BOCES seeks qualified and responsive vendors to provide grocery items. Items to be purchased from this contract may include, but are not limited to: grocery items not specified in this bid. **Items listed in Section A are specified on the attachments. Vendors may bid Section B for items of unknown type and quantity which will be purchased throughout the bid term also.**

SECTION A

The items listed in the attached Vendor Bid Item Listing will be referred to in this document as Section A, which consists of specific items the Participants have purchased in the past year or anticipates the possibility of purchasing during the bid term. For items in Sections A, Bidders are to provide item pricing per the following conditions:

1. MINIMUM BID REQUIREMENTS:

- **Nutrient Data Requirements:**
 - **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)*.**
 - **All required Data Submission Forms must be **submitted with the bid** and then to Participants prior to the delivery of any product, and no later than August 1, 2022.**
- Where a deviation or exception must be taken by the vendor to any part of the proposal, vendor must fully provide a detailed explanation of exception on the Questionnaire Form. In the absence of a written exception or deviation, vendor agrees to fully comply with all conditions and specifications of the proposal.
- The bidder shall insert the *price per unit, shipping container size and any variance for each item*. Bidders are directed to bid all items that they are able to supply as indicated on the Vendor Bid Item Listing form. If not bidding an item or items mark No Bid in appropriate place(s).
- All prices offered are net delivered.

2. MINIMUM ACCEPTABLE STANDARDS:

As described in the bid forms.

3. DELIVERY COSTS:

3.1 Delivery of all items shall be FOB destination. In recognition of the added overhead involved, due in part to additional handling this may create and because we expect the lowest price per unit of issue, a minimum order quantity is recognized at \$500.00 for all orders delivered to a single destination. Order quantities that do not meet the \$500.00 minimum may be delivered FOB destination with freight (or delivery charges) allowed. Shipping charges should appear as a separate item on the vendor's invoice. But, in cases where the aggregate sum exceeds \$500.00 for multiple orders being delivered to the same

location, then there will be no freight or delivery allowance. Any additional freight costs the bidder may anticipate should be factored into the product bid price.

3.2 NO ADDITIONAL SURCHARGE (INCLUDING BUT NOT LIMITED TO, FUEL SURCHARGE) will be paid by the BOCES or any of the Participants, (no matter how small an order may be).

4. DELIVERIES:

4.1 Prices are to be FOB each school/agency building in each district/agency participating in the bid. The successful bidder(s), upon notice, shall coordinate delivery schedules with all participating districts/agencies. It is understood that supplies shall be properly marked and packaged for inside delivery to specific school/agency buildings in accordance with the Delivery Site List. 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.

4.2 Deliveries of perishable items shall be made in a refrigerated vehicle: temperature of frozen items shall not exceed 0 degrees F and the temperature of fresh items not to exceed 40 degrees F. It is the responsibility of the successful bidder to deliver all items in good condition to the point of destination.

4.3 IDENTIFICATION OF DELIVERIES - Purchase order numbers must appear on the outside of all shipments.

SECTION B

Represents items of unknown type and quantity, which the Participants will purchase throughout the bid term. **For Section B, Bidders are to quote a percentage discount from any or all of the following:**

Bidder's general catalog which is current at the time of purchase.

Catalogs referenced in Section B may be hard copy catalogs, online catalogs, or price list. Updated catalogs or price lists shall be automatically supplied to the Participants at no additional cost during the bid term.

- a) Catalog:
 - Hard copy –
 - If bidding discount from hard copy catalog, bidder shall furnish a copy of the current catalog with the bid submission.
 - Additional copies of hard copy catalogs must be supplied at the Participant's request throughout the term of the bid at no cost to the Participant.
 - The catalog pricing provided at the time the bid is submitted shall remain in effect during the contract term, except as expressly authorized herein.
- b) Online:
 - Website -
 - If bidding discount from an online catalog, bidder shall indicate the website address on the bid form.
 - The online catalog pricing provided at the time the bid is submitted shall remain in effect during the contract term, except as expressly authorized herein.
- c) Price List:
 - Bidder's price list which is current at the time of purchase.
 - Specific manufacturer's price lists
 - Multiple manufacturers catalogs or price lists may be offered with discounts bid specific to each.
 - Bidder shall identify on the bid form the manufacturer name and shall reference the date of the manufacturer's catalog or price list from which discount will be applied.

A copy of each referenced manufacturer's ***price list or catalog must be provided with the bid***. The manufacturer's price list or catalog pricing provided at the time the bid is submitted shall remain in effect during the contract term, except as expressly authorized herein.

Discount offered shall be a flat rate, reflecting the minimum discount offered to the Participant for all purchases from that catalog or price list. However, multiple discounts from the same catalog, online/website or price list (e.g., varying discounts per item category) will not be considered.

All discount(s) offered (items a thru c) shall be the minimum discount(s) offered to the Participant at any time during the term of the bid. See sample quote request provided, (see Attachment A).

NOTE OF CLARIFICATION: Section A prices are net, delivered prices. Section B is a discount pricing structure for items not covered in Section A. The discount quoted in Section B will not apply to the prices quoted in Section A.

1. For items in Section B, the following terms and conditions shall apply:
 - a. Catalog (or list) price, less the discount, shall be net price, and shall be F.O.B. destination, freight prepaid and allowed to any Participant's location. No additional costs for shipping or delivery will be accepted by the Participant, with the exception of extremely large or overweight items (e.g., safes).
 - b. No minimum order requirements shall apply.
2. Purchases of items in Section B will be made as follows:
 - a. The Participant will fax or email a price inquiry to all awarded Section B Bidders offering a discount, listing the specific item(s) to be purchased at the time.
 - b. Bidder's price quotes shall be returned by fax or email to the Participant **within (1) business day of the request**, unless otherwise specified on the price inquiry.
 - c. Bidder's price quote shall specify base bid (catalog or list) price **and** net (discounted) price.
 - d. Award will be made to the Section B awarded bidder offering the best net price to the Participant for a particular order.
3. In the event the successful bidder of Section B item(s) proposes a price increase during the contract term, and such price increase is permitted by law, such price increase will be considered or authorized only to the extent of the verified amount the cost of such item(s) was increased to the bidder by its supplier or manufacturer. The BOCES retains the right to determine whether or not such proposed increase(s) are in the best interest of the Participants, and in accordance with applicable law. The BOCES reserves the right to audit and/or examine any pertinent books, documents, records or invoices relating to the bid or item(s) in question after reasonable notice and during normal business hours. If it is determined that the proposed increase(s) are not acceptable, the BOCES reserves the right to cancel the respective bid or contract.

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|---------------------------------------------|
| EVALUATION & AWARD DETERMINATION |
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1. LOW BID DETERMINATION/PRICING:

Section A:

- a) Award of items in Section A will be awarded on an item-by-item basis to the lowest responsible bidder(s) who meet(s) all the terms of the specifications and is in the best interest of the Cooperative Bid Group. The Participants reserve the right to factor in the administrative costs of making multiple awards, issuing multiple orders and dealing with multiple vendors in calculating which bids actually result in the lowest overall costs to the Participants; therefore if making an award to one vendor is in the best interest of the Participants, one award will be made. For example, the Participants reserve the right to consolidate awards and not necessarily award to what appears to be a low bid when administrative costs actually make it more costly to the Participants to award solely on the basis of the bid received.

- b) Manufacturers' model numbers are provided for all items for the purpose of designating a minimum standard of product type and quality. Manufacturer references are not intended to be restrictive. Bids may be submitted on the same or equivalent items. Bids will be considered for any product which meets or exceeds the functionality and quality of the specified item. If bidding an equivalent item, Bidder must provide the manufacturer and manufacturer's model or item number in the appropriate column on the bid form.

Section B:

Section B Is handled by the Participant issuing the price inquiry, review and award will be done by said Participant.

2. TIEBREAKING:

2.1 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.

2.2 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.

2.3 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.

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| POST AWARD CONTRACT PROCESS |
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1. PRODUCT SUPPLIED:

Section A:

- a. The items specified in the bid for Section A are readily available in the marketplace. Therefore, in the interest of providing equivalent quality at the lowest price to Participants, the Wayne-Finger Lakes BOCES Cooperative Bid Group reserves the right to accept bids for substitute items of equal quality in its sole discretion. When a vendor bids a substitute for a specified product, the vendor must provide a sample of the item at the time of the bid submission. Failure to provide samples when bidding a substitute will be grounds for a no bid for that item as being non-responsive. The BOCES Cooperative Bid Committee will evaluate all samples and determine comparability to specified item. 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.

- b. Additions/Deletions: during the term of the contract, the Participants reserve the right to delete item(s) or add comparable item(s) to the list, at prices to be negotiated with the Contractor.

Section B:

Represents items of unknown type and quantity, which the Participants will purchase throughout the bid term. See *Attachment A: Information & Directions for Replying to an RFQ for Section B* of this bid.

2. SALE ITEMS:

When a bid items appears on a company sales flyer at a price, lower than the bid price, the sales price will apply to all Participants. Vendors are required to distribute any rebates for products bid to the Participants.

3. PURCHASE ORDERS:

The participants will place Purchase Orders directly with the responsible bidder. Purchase orders shall be effective and binding upon the contractor when placed in the mail addressed to the contractor at the address shown on his/her bid form. **(NO SUBSTITUTES AFTER BID AWARD(S) HAVE BEEN MADE.)** The participants reserve the right to ask for deliveries to be made at any time prior to January 31, 2023. Each participant will indicate on the purchase order the addressee and the date delivery is required. The participants will place color/size on purchase orders where necessary. If vendor cannot deliver before requested date, the vendor must notify district within three days of receiving order so alternate arrangements can be made. Failure to meet delivery times may cause districts to reject future bids from the vendor.

4. EXCESSIVE DELAY:

4.1 It is expected that the delivery of items will be received by the BOCES within thirty (30) days from receipt of order by the vendor. If delivery by the vendor is delayed by more than fifteen (15) business days after the thirty (30) day delivery time frame, the BOCES reserves the right to terminate the order of any or all undelivered units.

4.2 The Board of Cooperative Educational Services reserves the right to cancel any or all items not delivered within forty-five (45) days of receipt of purchase orders, should doing so be in the best interest of their entity.

5. 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 by manufacturer. Like items shall have a summary total given for the referenced time period.

6. PAYMENTS:

Payments of any claim or invoice shall not preclude BOCES or Participants from making claims for adjustments on any item found not to have been in accordance with the contract specifications.