

## GENERAL INFORMATION

### 1. SCOPE:

1.1 The Wayne-Finger Lakes BOCES and Component School Districts of the Wayne-Finger Lakes BOCES and/or Agencies require **MILK, DAIRY PRODUCTS & JUICES**. The BOCES and School Districts 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 **MILK, DAIRY PRODUCTS & JUICES** satisfactory to each user, shall be required in all cases.

1.2 Provisions for Non-Federal Entity Contracts Under Federal Awards, as applicable. A majority of our Participants apply for federal reimbursement for their School Lunch Program. See attached Appendix.

### 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 assumed to 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 or to conforming to all specifications including all addenda issued.

### 5. RESPONSIBILITIES:

**Contractor Responsibility** - 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.

**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.

**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.

**6. CONTRACT TERM:**

Bid award period is September 1, 2022 through August 31, 2023. The contract may be extended for two (2) twelve month terms or less 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. UNANTICIPATED REQUIREMENTS:**

10.1 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 utilizing the percentage above cost included as a part of the bid form included in this document 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.

10.2 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.

**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. **Delivery in properly refrigerated vendor-owned vehicles required.** Any variance requires written approval of the Cooperative Bid Group, e.g., use of qualified and properly equipped sub-dealer(s) to deliver products to Participants.
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.

12.3 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.

## **13. 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.

## **14. REGULATIONS:**

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

## **15. SPECIFICATION REFERENCES:**

15.1 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.

15.2 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.

15.3 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.

15.4 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.

15.5 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.

**16. 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.

**17. 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).

**18. 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.

**19. NON-ASSIGNMENT:**

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 BOCES.

**20. 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.

**21. 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).

**22. 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>.

**23. 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.

**24. 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.

**25. 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.

**26. 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.

**27. 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.

**28. 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.

**29. 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

**30. 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.

**SPECIFICATIONS FOR MILK, DAIRY PRODUCTS & JUICES**

The BOCES is currently accepting sealed bids for the purchase of milk, dairy products and juices for use by the BOCES, School Districts and Counties as needed throughout the year. It is the intent of the BOCES to contract with one or more vendors for the majority of these foods. Such contracts, if awarded would be for a term as described in the General Information section of this document.

**1. MINIMUM BID REQUIREMENTS:**

- 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.
- 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.
- 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 Proposal form. If not bidding an item or items mark N/A in appropriate place(s).
- All prices offered are net delivered. The Participants will not pay additional or separate delivery costs including fuel surcharges of any kind.

**2. MINIMUM ACCEPTABLE STANDARDS:**

- Standards - All milk and milk products shall satisfy the definitions, standards, and requirements established by the New York State Department of Agriculture and Markets for Grade A milk and milk products. Milk for use in the cafeterias is to be in half-pint paper containers or pouches as required by participants. **Formulations on flavored milk should be the same as retail.**

Milk included in this contract:

1% Low fat Chocolate Milk	1% Lowfat Milk
2% Lowfat Milk	Homogenized Milk
Skim Milk	Skim Flavored Milk

- William F. Goodling Child Nutrition Act of 1998 - The William F. Goodling Child Nutrition Act of 1998 requires schools and institutions to purchase, to the maximum extent practicable, domestic commodities or products for use in meals served. Domestic commodities and products are produced and processed in the United States substantially using agricultural commodities that are produced in the United States. The Act stipulates that “substantially” means that over 51 percent of the final processed product consist of agricultural commodities grown domestically. Items submitted for the bid will be assumed to meet this requirement. If not, vendors are to specify any exceptions to this requirement when submitting their bids.
- **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 Database for Child Nutrition Program (NNDCP)*.**

**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 product, and no later than September 1, 2020.**

### 3. BUY AMERICAN PROVISION:

3.1 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, America 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.

### 3.2 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.

3.3 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.

3.4 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.

### 4. PRODUCT SUPPLIED:

Milk, Dairy Products and Juices: The items specified are readily available in the marketplace. Therefore, in order to insure consistency of quality, samples of all substitute items must be supplied with the bid or be available to the Bid Committee within forty-eight (48) hours of request.

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.

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.

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 refrigerator space. If this is not possible, the Participant(s) will advise the contractor as soon as possible.

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

### 5. DELIVERY REQUIREMENTS:

5.1 All milk is to be delivered in clean, sterilized crates. The exteriors of all milk, milk products' and juice containers shall be clean and free from liquid. Leaking cartons or pouches are not acceptable.

5.2 Milk, milk products and juices shall be delivered at the designated place in the cafeteria. In an emergency, additional milk is to be supplied within one hour of telephone order. Milk will be packaged in approved paper cartons or pouches, one-half pint units, and properly packed in clean crates or cases. Bottles are not acceptable.

5.3 Milk products shall be delivered at a temperature between 35-40 degrees in a refrigerated delivery truck.

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

5.5 DELIVERY COSTS - 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 \$100.00 for all orders delivered to a single destination. Order quantities that do not meet the \$100.00 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 \$100.00 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.

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).

## 6. GUARANTEE:

6.1 The contractor guarantees that all items delivered to the Participants shall be fresh and ready to use upon delivery. Further, that all state and local regulations have been met in the production, storage, preparation and shipping of all items supplied to the Participants. Should the Participant(s) deem any items unusable or unsatisfactory, the vendor agrees to immediately replace said items with fresh product or, at the Participant(s)'s sole discretion, credit the Participant for all costs associated with the rejected items.

6.2 All items shall be packaged in a professional manner customary to the industry and be ready for appropriate storage by the Participants. Loose or otherwise unpackaged items will not be accepted unless specifically authorized by the Participant and the Participant will not be held liable for any costs associated with the return of such items.

6.3 The vendor will be responsible for immediately replacing any damaged, outdated or spoiled products. Such products deemed unacceptable by the Participant shall be replaced within 24 hours of notification by the Participant.

6.4 Vendor must provide Market Condition Notification Report(s) concerning any issue(s) with the supply of the products in this bid during the contract term.

6.5 Credits must be issued in written format within 7 days of notification. Acceptable forms of documentation are an issuance of a credit memo or an email notification acknowledging the credit due.

6.6 The vendor guarantees that at no time will any product offered or supplied to the Participant be mislabeled or altered in any way contrary to the intent of the Federal Food, Drug and Cosmetic Act.

## 7. PURCHASE ORDERS:

Participating Districts 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 school districts reserve the right to ask for deliveries to be made at any time prior to August 31, 2023.

## 8. PRICE ADJUSTMENTS:

### 8.1 MILK:

#### Alternate No. 1 Price Adjustment:

It is hereby understood that the prices quoted in this bid are based on the **Class I price of \$28.22 per cwt. of milk, (at 3.5% butterfat test), as established for the month of May, 2022** under the terms of the official milk marketing order of the New York State Department of Agriculture and Markets for the Western New York Milk Marketing Area; or, if greater, the Class I price established by an applicable dairy compact. If the Class I price is thereafter increased or decreased, the amount of the increase shall be added and/or the amount of the decrease deducted from the rate

of payment under this contract, in accordance with the formula included herein. Such increases or decreases shall be effective for the same periods of time as those established by western New York Milk Marketing Area. **NOTE! THIS ESCALATOR CLAUSE MAY NOT BE MODIFIED.**

FORMULA FOR PRICE ADJUSTMENTS OF FLUID MILK:

- a. Take the difference per hundredweight for the Class I price between the price fixed for the month in question and the price of Class I milk for the base month indicated above.
- b. Multiply this difference per hundred weight by .0215 (there being 2.15 lb. in each quart of milk) to ascertain the difference in price per quart, this calculation will be carried to five decimal places.
- c. One-quarter of this difference in price for each one-half pint container of milk. This calculation will be carried to five decimal places and rounded to four decimal places.
- d. The sum will be added to the regular payment due the vendor if the price for

Class I milk is higher during the month in question than in the base month. If the price for Class 1-A is lower during this month than in the base month, the sum will be deducted from payment due the vendor.

Sample Calculation:

A.	Current month's Class I price	\$28.22
	Previous month's Class I price	<u>27.63</u>
	Price increase per 100 lb.	\$ .59
B.	.0215 X .59 =	.0127
	.2500 X .0127 =	.00313 = +.00313

If the contract is awarded under this alternate at the request of any Participant, the contractor will be required to submit with each monthly invoice, the computation used in arriving at the rate to be charged in the particular month.

The *Integrity Rider* (Appendix B) is part of these bid specifications and is to be reviewed and adhered to when submitting a bid and providing product(s) as indicated.

**8.2 DAIRY PRODUCTS & JUICES:** Any pricing adjustments during the contract term for *dairy products and juices* require written consent of the BOCES. In the event the successful bidder 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. Such price increase will become effective only after the BOCES receives a written request satisfying the requirements of this paragraph, and the BOCES agrees to the price increase in writing. **The successful bidder may not institute the new pricing on any purchase order received prior to the acceptance date from the BOCES.** 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, and to deny such proposed price adjustment. This section shall not be construed as a waiver of the BOCES right to enforce the contract pricing terms, or other remedies available by law.

## EVALUATION & AWARD DETERMINATION

### 1. LOW BID DETERMINATION/PRICING:

1. Any awards will be based on the list of items listed within the Vendor Bid Item Listing, as these are among the most frequently purchased types of milk, dairy products and juices.
2. Bidders must bid on both the base bid and the alternate bid for the items specified on the Bid Item Listing Form for Milk. The bid will be awarded as an aggregate award for all participants listed and based on the lowest responsive and responsible bid. The bid committee will consider all bids submitted and award to the low responsive bidder.
3. Bid sheets indicating quantities desired for both are included. The award decision will be based on which bid results are in the best interest of all Participants.
4. Sale items: When a bid item appears on a company sales flyer at a lower price, the lower price will apply to all bid participants.
5. The Committee reserves the right to award on the base bid or the alternate #1 bid. Neither the whole contract nor part of it shall be sublet without the written approval of the Committee. The BOCES reserves the right to reject any and all bids.
6. Base Bid: The price bid under the base bid is to be a firm price for the entire period of the contract.
7. The Committee reserves the right to award in any combination it feels is in its best interest.
8. Bids will be awarded after review and recommendation by the Bid Committee. Decisions of the committee will be final. The Bid Committee further reserves the right to reject any or all bids if deemed to be in the best interest of the Participants.
9. Method of Award: The bid will be awarded by the Cooperative Bid Committee to the overall lowest responsive and responsible bidder(s) by item, by group, in total, or any combination of items in part or in whole who meet(s) all the terms and conditions of the specifications and is in the best interest of the Participants.
10. The Bid Committee reserves 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. For example, the Bid Committee reserves 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.
11. No Bid Items: If bidder(s) does not submit a bid for a specific item, the highest bid price received for that item will be added to total bid to obtain equivalent totals. Low bid will be determined by the equivalent total.
12. Award of Bid: The award will be made within forty-five (45) days after the opening of bids.
13. Awards will be made using the items listed on the Vendor Bid Item Listing as a standard. The Participants will purchase additional items, as needed allowing the successful vendor the initial opportunity to supply all items except as defined within this bid document. The Participants reserve the right to solicit additional pricing if in their sole opinion, they feel that the prices offered by the successful vendor are in excess of the current market value. Should such a case occur, the Participant may purchase off contract. However, in such a case the Participant will return to the successful vendor for future purchases as they become necessary and as they meet the bid guidelines.

**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.

2.4 The buyer shall create a dated witness sign in sheet and shall collect the names and signatures of all witnesses. The witness sign in sheet along with the tie bid email announcement and the individual bidder responses to witness the event shall be permanently added to the bid solicitation folder for future auditing purposes and/or to address potential protests.

## POST AWARD CONTRACT PROCESS

### **1. PURCHASE ORDERS:**

Participating Districts 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) CAN BE MADE.)**

### **2. 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.

### **3. SALE ITEMS:**

When a bid item 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.

### **4. 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.

### **5. COMPLAINTS:**

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

Wayne-Finger Lakes BOCES Business Office  
Attn.: Lisa Parkison, NIGP-CPP, CPPO, 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.