

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 **FRESH FRUITS & VEGETABLES**. 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 **FRESH FRUITS & VEGETABLES** 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 successful vendor(s) shall be responsible for supplying and providing inside delivery of all fresh fruits and vegetables purchased as a result of the award of this bid.

4. 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 are required to generate their own purchase orders (to the successful vendors) in accordance with the bid provisions and the 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, 2017 through August 31, 2018. 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. MINIMUM ACCEPTABLE STANDARDS:

As described in the bid forms.

10. MINIMUM BID REQUIREMENTS:

Bidders are directed to bid all items that they are able to supply as indicated on the bid proposal form.

11. GUARANTEE:

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.

12. BIDDER QUALIFICATIONS:

12.1 All vendors submitting bids for consideration by the BOCES must be a participant of the USDA Pilot Program registered with the state of New York to do business in the state. **Bidder must be listed on the web site eligible vendor list or be able to submit documentation from the USDA to confirm status.** The web site where this information can be found is: www.ams.usda.gov/selling-food/pilot-project. If the link doesn't take you there copy and paste the URL in your web browser. Vendor requirements for the Pilot Program have been provided in a separate attachment.

12.2 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.

12.3 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.

12.4 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.

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

13. PRICE ADJUSTMENTS:

Pricing shall remain firm as that bid for the initial sixty (60) calendar day period of the contract. After the initial sixty (60) days ***all items shall be priced in accordance with the percentage listed on item #120001 of Vendor Bid Listing.*** Should the price for any particular item change the vendor shall include with the submittal of their invoice a copy of the new wholesale price paid by the vendor to allow the Participant(s) to verify the accuracy of the invoice. All wholesale pricing sheets must be copies of the actual invoice to the vendor on the wholesalers form and may not be on the contracted vendor's letterhead.

14. BID ITEMS:

14.1 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.

14.2 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.

15. OFF CONTRACT PURCHASES:

The Participants reserves the right to periodically purchase various fresh fruits and vegetables from any other source legally available to the Participants including but not limited to New York State Contracts, Pride of New York and contracts let by other Counties in New York State as allowed by General Municipal Law 103. This will be done on a limited basis and will typically be for specialty or locally seasonal items.

16. 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.

17. REGULATIONS:

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

18. 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.

19. IRAN DIVESTMENT ACT:

19.1 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.

19.2 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.

19.3 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.

20. BID FORMAT:

The bidder shall insert the *price per pound, 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 bid proposal form. If not bidding an item or items mark N/A in appropriate place(s).

21. BID AWARD:

21.1 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.

21.2 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.

21.3 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.

21.4 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.

21.5 Award of Bid: The award will be made within forty-five (45) days after the opening of bids.

22. BUY AMERICAN PROVISION:

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 (41 USC 1706(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.

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. PLACEMENT OF ORDERS:

24.1 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.

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

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

25. 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.

26. 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).

27. DELIVERY REQUIREMENTS:

27.1 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 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.

27.2 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.

27.3 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.

27.4 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.

28. 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 statutes, 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.

29. 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).

30. 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.

31. NO ARBITRATION:

Wayne-Finger Lakes BOCES
Cooperative Fresh Fruits & Vegetables
WFL 2018-01

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.

32. 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.

33. EXCEPTIONS:

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

34. COMPLAINTS:

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

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