

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 **ICE CREAM & FROZEN DESSERTS**. 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 **ICE CREAM & FROZEN DESSERTS** satisfactory to each user, shall be required in all cases.

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

2. AMENDMENTS TO BID:

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

3. RESPONSIBILITY OF CONTRACTOR:

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

4. BOCES' RESPONSIBILITY:

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

5. PARTICIPANTS' RESPONSIBILITY:

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

6. CONTRACT TERM:

Bid period from the August 1, 2017 through July 31, 2018. The contract may be extended for two (2) 1-year 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. 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. BIDDER QUALIFICATIONS:

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

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

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

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

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

12. IRAN DIVESTMENT ACT:

12.1 By submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, Bidder/Contractor (or any assignee) certifies that it is not on the "Entities Determined To Be Non-Responsive Bidders/Offerors 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. 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.

14. AWARD/LOW BID DETERMINATION:

14.1 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.

14.2 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.

14.4 The Bid Group reserves the right to calculate a per ounce cost when bids are received for products of different sizes. The Wayne-Finger Lakes BOCES also reserves the right to award the bid by items or combination of items as deemed to serve the best interest of the bid participants.

14.5 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.

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

15. TIEBREAKING:

15.1 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.

15.2 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.

15.3 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.

16. PRODUCT SUPPLIED:

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

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

16.3 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.

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

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

17. NUTRIENT DATA REQUIREMENTS:

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

17.2 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, 2017.

18. 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.

19. PACKAGING:

19.1 All ice cream products shall be wrapped in sanitary, waxed or glassine paper bags or similar packaging in accordance with commercial practice for the industry. Vendor must take all precautions to prevent crushing of ice cream products. Packaging is to assure adequate protection from any form of contamination.

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

19.3 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. ICE CREAM FREEZER CABINETS:

20.1 The successful Bidder(s) are to provide freezer cabinets for storage of ice cream that are furnished with a mounted thermometer and lock with key. The successful vendor(s) will be required to furnish freezer cabinets with front loading feature at all Participants that require such units, and must be of capacity to store daily.

20.2 The successful Bidder(s) is to provide display freezer cabinets for ice cream sales that are furnished with a mounted thermometer. The successful vendor will be required to furnish display freezer cabinets at all Participants that require such units. If required, freezers must have locks and wheels.

20.3 Any Participant that requires holding refrigeration units or display freezers must be supplied with the units upon request at no additional charge to the participant(s) for the duration of the contract. Bidder shall furnish the latest type of ice cream cabinets containing an odorless, tasteless and harmless refrigerant and shall maintain the equipment in normal operating condition at all times. The Bidder shall inform each school's Cook-Manager of any routine cleaning which should be done to prevent problems with each freezer. Check food service area for freezer space – freezer must fit. Freezers must be in good condition. Freezers with broken seals, dents, defective locks, inoperable wheels, or other non-working parts must be repaired or replaced within 30 days of receiving written notification from the school district.

20.4 In case of mechanical or other failure of equipment of the contractor(s), it shall be the responsibility of the contractor(s) to maintain and repair all equipment at the expense of the supplier. It is unknown at this time which districts require these units. If a freezer becomes inoperable (such as a motor malfunction) a substitute freezer must be provided within 72 hours of notification, verbal or written by the school district.

20.5 Freezer requirements list known as of the date of this bid. ***The awarded vendor(s) must contact the individual participant(s) prior to first shipment to determine what equipment is needed.***

21. SPECIFICATION REFERENCES:

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

21.2 If the item or items called for in these specifications are delivered and fail to meet specifications in any respect, the bidder will be notified and he will arrange for their removal from the Participant's property at no expense to the Participant. If successful bidder fails to remove the items, which, in the

opinion of the Bid Committee, do not meet specifications, the Participant will arrange to have such items removed and any expense connected therewith will be the responsibility of the successful bidder.

22. 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 July 31, 2018.

23. DELIVERY & DELIVERY COSTS:

23.1 *Minimum Delivery Requirement* is once per week if requested by the participant.

23.2 *Minimum Order*. Prices are to be FOB Destination to each school/agency building in each district/agency participating in the bid. 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 \$150.00 for all orders delivered to a single destination. Order quantities that do not meet the \$150.00 minimum may be delivered FOB destination with delivery charges allowed. Shipping charges should appear as a separate item on the vendor's invoice. Any additional delivery costs the bidder may anticipate should be factored into the product bid price. The successful bidder(s), upon notice, shall coordinate delivery schedules to specific sites of all participating school districts and agencies. Changes can be made only with the written consent of an authorized representative of the Participants.

23.3 The vendor will deliver all ice cream items in containers suitable for storage in freezer cabinets. Containers must be properly designed and constructed to prevent spillage of contents. Delivery is to be made in vehicles owned and operated by the vendor.

23.4 Daily deliveries must be accompanied by a delivery receipt. 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.

23.5 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).

24. IDENTIFICATION OF DELIVERIES:

Purchase order numbers must appear on the outside of all shipments.

25. UNANTICIPATED REQUIREMENTS:

25.1 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. 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.

25.2 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.

26. 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.

27. USAGE REPORTS:

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

28. CANCELLATION CLAUSE:

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

29. 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.

30. 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.

31. GOVERNING LAW:

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

32. JUDGMENTS/LEGAL FINDINGS:

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

33. 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.

34. 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.

35. 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.

36. 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.

37. EXCEPTIONS:

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

38. COMPLAINTS:

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

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