

State of New York Executive Department
Office Of General Services
Procurement Services Group
Corning Tower Building - 38th Floor
Empire State Plaza
Albany, New York 12242
<http://www.ogs.state.ny.us>

CONTRACT AWARD NOTIFICATION

Title	:	Group 02400 – GROCERIES (Downstate & Long Island)	
		Classification Code: 50	
Award Number	:	19958	(Replaces Award C-00694)
Contract Period	:	November 1, 2005 to September 30, 2010	
Bid Opening Date	:	June 16, 2005	
Date of Issue	:	October 14, 2005 (Revised 10/30/06)	
Specification Reference	:	As Incorporated Herein	
Contractor Information	:	Appears on Page 2 of this Award	

Address Inquiries To:

State Agencies & Vendors	Political Subdivisions & Others
Name : Christopher M. Martinez Title : Purchasing Officer I Phone : 518-402-5069 Fax : 518-474-5052 E-mail : christopher.martinez@ogs.state.ny.us	Customer Services Phone : 518-474-6717 Fax : 518-474-2437 E-mail : customer.services@ogs.state.ny.us

The Procurement Services Group values your input.
Complete and return "Contract Performance Report" at end of document.

Description

Contract is for groceries & household products for community residences and other facilities located in the downstate/NYC/Long Island area. Certain cookies, snacks, ambient food, and personal care products shall be available in smaller "retail" sizes (i.e., 7.5 oz microwavable meals, 4 oz fruit packs, 0.7 - 0.9 oz cereals, 6 oz juices, 30 oz sauces, 4 oz puddings, 15 oz shampoo, 12 oz mouthwash, 4.6 oz toothpaste, 3.5 oz bar soap, etc.). Use of this contract is not mandatory.

PR # 19958-T

(continued)

NOTE: See individual contract items to determine actual awardees.

<u>CONTRACT #</u>	<u>CONTRACTOR & ADDRESS</u>	<u>TELEPHONE #</u>	<u>FED.IDENT.#</u>
PC62069	METROPOLITAN FOODS INC. DBA DRISCOLL FOODS 25 East Union Avenue East Rutherford, NJ 07073 DISC.: 1% - 15 days	1-866-246-9329 845-621-5551 William Kenney Fax: 866-246-9255 845-621-4446 E-mail: WJK2767@cs.com Web: www.driscollfoods.com	223482240

Contractor will accept the New York State Procurement Card for orders not exceeding \$10,000.00

Cash Discount, If Shown, Should be Given Special Attention.

INVOICES MUST BE SENT DIRECTLY TO THE ORDERING AGENCY FOR PAYMENT.

(See "Contract Payments" and "Electronic Payments" in this document.)

AGENCIES SHOULD NOTIFY THE PROCUREMENT SERVICES GROUP PROMPTLY IF THE CONTRACTOR FAILS TO MEET DELIVERY OR OTHER TERMS OF THIS CONTRACT. PRODUCTS OR SERVICES WHICH DO NOT COMPLY WITH THE SPECIFICATIONS OR ARE OTHERWISE UNSATISFACTORY TO THE AGENCY SHOULD ALSO BE REPORTED TO THE PROCUREMENT SERVICES GROUP.

NOTE TO AUTHORIZED USERS:

When placing purchase orders under the contract(s), the authorized user should be familiar with and follow the terms and conditions governing its use which usually appears at the end of this document. The authorized user is accountable and responsible for compliance with the requirements of public procurement processes. The authorized user must periodically sample the results of its procurements to determine its compliance. In sampling its procurements, an authorized user should test for reasonableness of results to ensure that such results can withstand public scrutiny.

The authorized user, when purchasing from OGS contracts, should hold the contractor accountable for contract compliance and meeting the contract terms, conditions, specifications, and other requirements. Also, in recognition of market fluctuations over time, authorized users are encouraged to seek improved pricing whenever possible.

Authorized users have the responsibility to document purchases, particularly when using OGS multiple award contracts for the same or similar product(s)/service(s), which should include:

- a statement of need and associated requirements,
- a summary of the contract alternatives considered for the purchase,
- the reason(s) supporting the resulting purchase (e.g., show the basis for the selection among multiple contracts at the time of purchase was the most practical and economical alternative and was in the best interests of the State).

NAME OF PRICE GUIDE:

Order Guide for OMRDD, Effective Date: July 1, 2005.

(continued)

PRICE:

GENERAL

Price includes all customs duties and charges and is net, F.O.B. destination any point within the downstate/NYC/Long Island Area as designated by the ordering agency.

In addition, upon mutual agreement, delivery locations may be expanded per the "Extension of Use" clause.

All prices for the contract shall be net FOB point of destination designated by ordering agency and shall include:

- inside delivery
- residential delivery
- delivery on a specific day and/or within certain specified hours if so designated by ordering site
- "restricted delivery" (please see "DELIVERY" clause)
- furnishing of PRICE GUIDES to all sites
- use of appropriate type (i.e., refrigerated, freezer) vehicles
- use of appropriate size vehicles to accommodate site limitations
- compliance with all local ordinances and vehicular restrictions
- billing and payments in U.S. Dollars

FIRM PRICING THROUGH SEPTEMBER 30, 2007

All pricing for the contract shall be firm for the first two years of the contract term.

If a catastrophic situation occurs whereby a supplier to the Contractor increases costs, a new price may be agreed to by the State and the contractor, - OR - the product involved may be temporarily or permanently deleted/dropped from PRICE GUIDE.

Every year thereafter (beginning with the third year), prices may be adjusted upward or downward pending a written request by the awarded contractor OR by the State. No price increases shall be implemented by a Contractor prior to written confirmation by the Procurement Services Group.

CPI PRICE ADJUSTMENT

The Contractor may request a total of one increase each year to the awarded price guide after the initial two years to be effective on October 1, 2007 and every year thereafter on October 1st. Pricing will be firm through September 30, 2007. Effective October 1, 2007 a price adjustment may be allowed based on the Consumer Price Index (CPI-U) for all Urban Consumers, Not Seasonally Adjusted, U.S. City Average, All Items, (Series ID: CUUR0000SAO) as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212. The maximum allowance for any price adjustment for any individual year shall be 5%. The index is available through the Internet at the Bureau of Labor Statistics (BLS) website at "www.bls.gov.com." If during the time the Price Adjustment is requested, the above series ID is discontinued or not available, the State reserves the right to implement another applicable index.

Price adjustments using the CPI involve changing the prices listed in the awarded Contractor's price guide by the percent change in the level of the CPI between the reference period and a subsequent time period. For the first price adjustment period, the reference period shall be June 2005 and the "subsequent" time period shall be July 2007. Every subsequent price adjustment shall be based on utilizing the CPI-U June 2005 Index figure to the following subsequent CPI-U July figure. Each price adjustment shall be effective the following October 1st.

An example of the price adjustment calculation is as follows (All figures used are for illustrative purposes only):

(continued)

PRICE: (Cont'd)

CPI-U (CUUR0000SA0) July 2007	200.5
CPI-U (CUUR0000SA0) June 2005	195.6
Equals index point change	4.9
Divided by “referenced” period CPI-U	195.6
Equals	0.02505
Rounded to nearest thousandth:	0.025
Results multiplied by 100 to achieve percent	2.5%
Maximum allowable increase to prices in Price Guide.	

*[Less than 5% a year. Therefore full % to apply.]
 {NOTE: This is an "increase". This could be a “decrease” if index went down!}

HIGH VOLUME PRICING:

Special pricing may be offered for single, large volume purchases as identified by ordering agency.

MINIMUM ORDER:

Minimum order is \$300.00 for delivery to a single location without a “drop” charge, delivery fee, additional cost, etc. The \$300 minimum is for aggregate total of all products ordered; products may be on more than one purchase order, products may be on more than one invoice.

There shall be no additional charges, fees, delivery costs, etc., for back orders (product previously ordered and not delivered by contractor).

Contractor may elect to honor orders for less than the minimum order.

REQUEST FOR CHANGE:

Any request by the agency or contractor regarding changes in any part of the contract must be made in writing to the Office of General Services, Procurement Services Group, prior to effectuation.

CONTRACT PAYMENTS:

Payments cannot be processed by State facilities until the contract products have been delivered in satisfactory condition or services have been satisfactorily performed. Payment will be based on any invoice used in the supplier's normal course of business. However, such invoice must contain sufficient data including but not limited to contract number, description of product or service, quantity, unit and price per unit as well as federal identification number.

State facilities are required to forward properly completed vouchers to the Office of the State Comptroller for audit and payment. All facilities are urged to process every completed voucher expeditiously giving particular attention to those involving cash discounts for prompt payment.

If the contract terms indicate political subdivisions and others authorized by law are allowed to participate, those entities are required to make payments directly to the contractor. Prior to processing such payment, the contractor may be required to complete the ordering non-State agency's own voucher form.

See "Contract Billings" in Appendix B, OGS General Specifications.

ELECTRONIC PAYMENTS:

The Office of the State Comptroller (OSC) offers an "electronic payment" option in lieu of issuing checks. To obtain an electronic payment authorization form visit the OSC website at www.osc.state.ny.us or contact them by e-mail at epunit@osc.state.ny.us or by phone at 518-474-4032.

NOTE TO CONTRACTOR:

This Contract Award Notification is not an order. Do not take any action under this contract except on the basis of purchase order(s) from the agency or agencies.

(continued)

PREFERRED SOURCE PRODUCTS AND SERVICES:

Some products/services in this contract may be available from one or more preferred source suppliers such as Correctional Industries (Corcraft), Industries for the Blind of NYS, and NYS Industries for the Disabled. Agencies are reminded to comply with the statutory requirements under Section 162 of the State Finance Law and the guidelines issued by the State Procurement Council to afford first priority to products and services available from preferred sources which meet your form, function and utility.

Contractors are required to include this notice in all price lists and contract updates.

OVERLAPPING CONTRACT ITEMS:

Products/services available in this contract may also be available from other New York State contracts. Agencies should select the most cost effective procurement alternative that meets their program requirements and maintain a procurement record documenting the basis for the selection.

NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS:

New York State political subdivisions and others authorized by New York State law may participate in contracts. These include, but are not limited to local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See "Participation in Centralized Contracts" in Appendix B, OGS General Specifications. For purchase orders issued by the Port Authority of New York and New Jersey (or any other authorized entity that may have delivery locations adjacent to New York State), the terms of the "Price" clause shall be modified to include delivery to locations adjacent to New York State.

Upon request, all eligible non-State agencies must furnish contractors with the proper tax exemption certificates and documentation certifying eligibility to use State contracts. A list of categories of eligible entities is available on the OGS web site (www.ogs.state.ny.us). Click on "For Government-Contracts and Purchasing," then "About Procurement," then "Non-State Agency Legal References." Questions regarding an organization's eligibility to purchase from New York State Contracts may also be directed to OGS Procurement Services Group's Customer Services at 518-474-6717.

EXTENSION OF USE:

Any contract resulting from this award may be extended to additional States such as New Jersey or Connecticut or governmental jurisdictions located in other states upon mutual written agreement between New York State (the lead contracting State) and the contractor. Political subdivisions and other authorized entities within each participating State or governmental jurisdiction may also participate in any resultant contract if such State normally allows participation by such entities. New York State reserves the right to negotiate additional discounts based on any increased volume generated by such extensions.

GEOGRAPHIC LOCATIONS:

The contract's intended coverage area is the counties of Westchester, Orange, Rockland, Sullivan, New York (Manhattan), Bronx, Richmond (Staten Island), Queens, Kings (Brooklyn), Nassau and Suffolk.

ADDITION OF PRODUCTS:

Subsequent to award, consideration may be given to the addition of products to this contract as a part of the PRICE GUIDE, if such products are:

- Needed by a client agency;
- Similar to those already awarded, or are of the same product line, or are included in contractor's Product Catalog.
- Reasonably priced.

If pack size change occurs, pricing shall be on a prorated basis. Also, contractor shall not refuse a request from the State to add a product to PRICE GUIDE if the product is readily available from a supplier.

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DELIVERY:

GENERAL

Contractor shall be able to deliver at least once a week to each location on a consolidated basis of all products requested by an ordering facility on the facility's scheduled delivery date. Deliveries shall be on weekdays during normal business hours. Each delivery location shall be notified by the contractor at the inception of the contract of its regularly scheduled delivery day(s). Contractor shall contact ordering facility prior to making delivery if regularly scheduled delivery date is changed.

RESTRICTED DELIVERY

Price includes "restricted" delivery. Delivery to some facilities, particularly Correctional Facilities, have delivery "restricted", delivery must be made during certain hours, generally between 8:30 a.m. to 10:30 a.m. and 12:30 p.m. to 2:30 p.m., and must be made only on weekdays (Monday through Friday) except/excluding State holidays. (NOTE: Other restrictions, such as lock downs and security inspection of vehicle & trailer, may also affect deliveries to a Correctional Facility.) Basement deliveries may be required.

OUT OF STOCK/NOT AVAILABLE PRODUCT

Contractor shall notify ordering facility of out of-stock/not available products as soon as practical after receipt of order, but in any event no later than the day before delivery.

Suitable substitution shall be made with the consent of the customer in the event of out of stock/not available product situations. Such substitutions shall be of same grade, quality, etc. Substitutions should not be made on a continuing basis. Explanation of repeated/continued substitutions shall be made to the State. Out-of-stock/not available product situations may be a basis for cancellation of contract and/or charging back for obtaining such product elsewhere.

REPLACEMENT

Any claim that product delivered is unusable (damaged, rotten, unedible, unacceptable substitution, etc.), shall be resolved by credit, substituting or other applicable means within three (3) days upon notice from receiving agency. If a satisfactory resolution is not reached between the ordering agency and the contractor, a decision may be made by the Procurement Services Group which shall be final.

REFRIGERATION

Product integrity, wholesomeness, safety, fitness, etc., shall be preserved by maintaining proper temperature with the use of refrigerated/freezer trucks for refrigerated and frozen goods; ambient trailers shall not be used to ship refrigerated/frozen product.

CONTAINERS FOR CORRECTIONAL FACILITIES

Correctional Facilities, and possibly some other institutions or Authorized Users, require packaging and containers that do not present security problems (i.e. wire, metal, sharp edges, glass, etc., that may possibly be fashioned into a weapon). The Contractor may be required to modify and/or change packaging and/or containers for delivery to some locations, in order to reduce potential security problems. There shall be no surcharge in pricing for Contractor's packaging or containers used to meet security requirements.

CONTRACT PERIOD:

General - It is the intention of the State to enter into a contract for the term as stated herein.

Price Adjustment - Price adjustment may be permitted only as designated in separate "PRICE" clause. Price decreases or discount increases are permitted at any time.

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CANCELLATION FOR CONVENIENCE:

The State of New York retains the right to cancel this contract, in whole or in part without reason provided that the Contractor is given at least sixty (60) days notice of its intent to cancel. This provision should not be understood as waiving the State's right to terminate the contract for cause or stop work immediately for unsatisfactory work, but is supplementary to that provision. Any such cancellation shall have no effect on existing Agency agreements, which are subject to the same 60 day discretionary cancellation or cancellation for cause by the respective user Agencies.

CONTRACT MIGRATION:

State Agencies or any other authorized user holding individual contracts with contractors under this centralized contract shall be able to migrate to this contract award with the same contractor, effective on the contract begin date (retroactively, if applicable). Migration by an agency or any other authorized user to the centralized contract shall not operate to diminish, alter or extinguish any right that the agency or other authorized user otherwise had under the terms and conditions of their original contract.

CONTRACT CANCELLATION:

If a contract is canceled, the State reserves the right to pursue an award to the next low compliant Bidder.

SHORT TERM EXTENSION:

In the event the replacement contract has not been issued, any contract let and awarded hereunder by the State, may be extended unilaterally by the State 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), prices, 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.

EMERGENCY PURCHASING:

In the event that a disaster emergency is declared by Executive Order under Section 28 of Article 2-B of the Executive Law, or that the Commissioner determines pursuant to his/her authority under Section 163(10)(b) of the State Finance Law that an emergency exists requiring the prompt and immediate delivery of products or services, the Commissioner reserves the right to obtain such products or services from any source, including but not limited to this contract, as the Commissioner in his/her sole discretion determines will meet the needs of such emergency. Contractor shall not be entitled to any claim or lost profits for products or services procured from other sources pursuant to this paragraph.

"OGS OR LESS" GUIDELINES APPLY TO THIS CONTRACT:

Purchases of the products included in the Invitation For Bids and related Contract Award Notification are subject to the "OGS or Less" provisions of Section 163.3.a.v., Article XI, of the New York State Finance Law. This means that State agencies can purchase products from sources other than the contractor provided that such products are substantially similar in form, function or utility to the products herein and are:

1. lower in price
-and/or-
2. available under terms which are more economically efficient to the State agency (e.g. delivery terms, warranty terms, etc.).

Agencies are reminded that they must provide the State contractor an opportunity to match the non-contract savings at least two business days prior to purchase. In addition, purchases made under "OGS or Less" flexibility must meet all requirements of law including, but not limited to, advertising in the New York State Contract Reporter, prior approval of the Comptroller's Office and competitive bidding of requirements exceeding the discretionary bid limit. State agencies should refer to Procurement Council Bulletin "OGS or Less Purchases" for complete procedural and reporting requirements.

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CUSTOMER SUPPORT:

The Contractor shall provide the following customer support:

- TELEPHONE CUSTOMER SERVICE REPRESENTATIVE(S) to respond to inquiries from sites during normal business hours, from 9 a.m. to 5 p.m., to assist with routine problems related to ordering, shipment, and billing.
- FIELD SERVICE REPRESENTATIVE(S) to call on sites to answer questions, assist in the return of goods, and to provide other assistance as needed. This Field Representative must call on the site within two weeks of request. [NOTE: A field service representative is not required to make routine weekly calls to each site merely to take orders.]

REPORTS:

Every six months (every April covering the months of October-March, and every October covering the months of April-September) the contractor shall provide four types of reports as noted below in Excel format. Reports are to be forwarded to the Office of General Services, Procurement Services Group,

- By Location - Individual listing of total dollar value for each order for each site.
- By Item - Aggregate (cumulative to date) sales for each item/product listing showing QUANTITY and VALUE.
- By Highest Value - A descending listing by total value of all products delivered.
- Aggregate Total - Total sales (cumulative to date) for the entire contract (all sites) by VALUE. [Not a breakdown by site - - - merely a single total.]

PRODUCT REQUIREMENTS:

GENERAL - Product shall be the same as that which is furnished to the general trade, meet or exceed USDA, USDC, State, and industry standards and requirements; have a freshness parameter so that the facilities have sufficient time from the date of delivery to consume these foods before quality deteriorates; conform to State, Federal and industry standards with respect to safety. Conformance to standards and requirements shall include, but not be limited to: weights, measures, fill of containers, drained weights, contamination, or condition on delivery.

The contractor guarantees any product delivered complies in all respects with standards and regulations established by Federal or New York State laws - - - this includes the Federal Food, Drug and Cosmetic Act, decisions of the U.S. Department of Agriculture, and decisions of the U.S. Department of Commerce. The contractor also guarantees any product delivered is not adulterated or misbranded within the meaning of standards and regulations established by Federal or New York State laws. The contractor may be required to submit letter of guarantee from manufacturer stating their compliance with Federal and/or New York State laws and regulations.

PATHOGENS - No Escherichia coli 0157:H7, or any other pathogens, are permitted in any product.

FROZEN PRODUCT - The maximum time products may be held in a frozen state prior to delivery shall be as follows:

- FROZEN FRESH MEAT (except Ground and Diced Meat) - 90 days.
- GROUND & DICED MEATS - 45 days.
- CURED & PROCESSED MEAT - 45 days.

(continued)

PRODUCT REQUIREMENTS: (Cont'd)

KOSHER AND PASSOVER CERTIFICATION

Any product designated as "Kosher" shall comply and be labeled with the correct rabbinical certification and shall meet all the requirements of that certification.

Any product designated as "Passover" shall comply with all requirements for Passover and be labeled with the correct certification. Kosher labeling and requirements must be acceptable to the ordering agency.

GRADES & SPECIFICATIONS

All products offered shall be grade B or better. OGS and/or Authorized Users have the right on demand, to request verification that the specifications and grades for the food ordered are being provided by the contractor.

PRODUCT ACCEPTABILITY

If an authorized user complains that a product is not acceptable due to poor quality, taste, color, etc., the contractor shall offer a substitute product at the same or lower price. If the problem cannot be resolved within 72 hours, either the user or the Contractor can appeal to the Office of General Service whose decision shall be final.

SAMPLES AND TESTING

The State has the right to request samples at no charge and test any product purchased by authorized users in order to determine whether the item is acceptable and meets specifications and grades.

(continued)

State of New York
Office of General Services
PROCUREMENT SERVICES GROUP
Contract Performance Report

Please take a moment to let us know how this contract award has measured up to your expectations. If reporting on more than one contractor or product, please make copies as needed. This office will use the information to improve our contract award, where appropriate. **Comments should include those of the product’s end user.**

Contract No.: _____ Contractor: _____

Describe Product* Provided (Include Item No., if available): _____

*Note: “Product” is defined as a deliverable under any Bid or Contract, which may include commodities (including printing), services and/or technology. The term “Product” includes Licensed Software.

	Excellent	Good	Acceptable	Unacceptable
• Product meets your needs				
• Product meets contract specifications				
• Pricing				

CONTRACTOR

	Excellent	Good	Acceptable	Unacceptable
• Timeliness of delivery				
• Completeness of order (fill rate)				
• Responsiveness to inquiries				
• Employee courtesy				
• Problem resolution				

Comments: _____

_____ (over)

Agency: _____ Prepared by: _____

Address: _____ Title: _____

_____ Date: _____

_____ Phone: _____

_____ E-mail: _____

Please detach or photocopy this form & return by FAX to 518/474-2437 or mail to:

OGS PROCUREMENT SERVICES GROUP
Customer Services, Room 3711
Corning 2nd Tower - Empire State Plaza
Albany, New York 12242
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