



Request for Proposal 08-X-39553

**For: Foods: Ice Cream & Frozen Novelties-2Yr
North, Central & South Zones, Statewide**

Event	Date	Time
Bidder's Electronic Question Due Date (Refer to RFP Section 1.3.1 for more information.)	09/07/07	5:00 PM
Mandatory Pre-bid Conference	N/A	N/A
Mandatory Site Visit	N/A	N/A
Bid Submission Due Date (Refer to RFP Section 1.3.2 for more information.)	09/27/07	2:00 PM

Dates are subject to change. All changes will be reflected in Addenda to the RFP posted on the Division of Purchase and Property website.

Small Business Set-Aside (Refer to RFP Section 4.4.2.2 for more information.)	Status <input checked="" type="checkbox"/> Not Applicable	Category <input type="checkbox"/> I
	<input type="checkbox"/> Entire Contract	<input type="checkbox"/> II
	<input type="checkbox"/> Partial Contract	<input type="checkbox"/> III
	<input type="checkbox"/> Subcontracting Only	

RFP Issued By

Using Agencies Statewide

State of New Jersey
Department of the Treasury
Division of Purchase and Property
Trenton, New Jersey 08625-0230

State of New Jersey
Cooperative Purchasing Members

Date: August 20, 2007

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1.0 INFORMATION FOR BIDDERS

1.1 PURPOSE AND INTENT

This Request for Proposal (RFP) is issued by the Purchase Bureau, Division of Purchase and Property, Department of the Treasury on behalf of the State of New Jersey Agencies. The purpose of this RFP is to solicit bid proposals for **Ice Cream & Frozen Novelties-2Yr: North, Central, South Zones, Statewide**. The intent of this RFP is to award a contract for each line item within the geographic zone specified, to that responsible bidder whose bid proposal(s), conforming to this RFP is most advantageous to the State, price and other factors considered. However, the State reserves the right to separately procure individual requirements that are the subject of the contract during the contract term, when deemed by the Director to be in the State's best interest.

The NJ Standard Terms and Conditions version 05 09 06 will apply to all contracts or purchase agreements made with the State of New Jersey. These terms are in addition to the terms and conditions set forth in this RFP and should be read in conjunction with them unless the RFP specifically indicates otherwise.

The State intends to extend the contract[s] awarded to the Purchase Bureau's cooperative purchasing partners. These partners include quasi-state agencies, counties, municipalities, school districts, volunteer fire departments, first aid squads, independent institutions of higher learning, County colleges and State colleges. Although the State, with the assent of the vendor(s), is making the use of any contract resulting from this RFP available to non-State Agencies, the State makes no representation as to the acceptability of any State RFP terms and conditions under the Local Public Contracts Law or any other enabling statute or regulation.

1.2 BACKGROUND

This is a revised re-procurement of the **Ice Cream Northern-Central-South Zone Various Agencies** term contract, presently due to expire on **October 31, 2007**.

This RFP has changed considerably since the last time that these items were placed out to bid. Therefore, please thoroughly read the entire RFP including, but not limited to, Section 3.0 in its entirety, the price sheets with the respective commodity code descriptions; Section 2.2 definitions, Section 4.4.1.1 Price List submittals and Appendices 3.15, 3.16 and 3.17.

Notable changes include, but are not limited to:

- a) Sliced ice-cream pricing shall be submitted as part of the novelty Price List rather than as an independent line item (for a single zone) as was the method of bidding and award for this commodity in the past.
- b) The four-fluid-ounce cups (118 ml) shall include, the full line of brand offerings, i.e.: sherbets, water ices, ice cream, frozen yogurt varieties (of standard, premium, low-fat, fat-free and/or reduced fat, lite, sugar-free and/or no-sugar-added, and seasonal/new flavor characteristics). Flavors offered shall include the full line of brand offerings.
- c) Bidder or Contractor shall not limit flavor varieties offered in response to this bid or contract awards and shall not prohibit the purchase of new or seasonal flavors as they are introduced to the market for Price List items and 4-ounce cup varieties.

d) Pricing lines and/or net price lists for each line item shall **remain constant** for each six (calendar) month period within the two-year contract term, and any extension thereof. Revisions to the original proposed net price lists/net pricing are considered, as explained in Section 3.15, Section 3.16 and Section 3.17 of this RFP. Pricing will be reviewed by the Purchase Bureau for adjustment to the bid price, upon the request of the Contractor, at the fourth month anniversary, tenth month anniversary, and every six months thereafter, to determine if a price increase is warranted for the second-half of year-one, the first-half of year-two, etc..

e) The contract awards shall be for a period of two years, minimum, rather than 12 months as has been the practice in the previous ice cream/novelty contracts awarded by the State.

Bidders who are interested in the current contract specifications and pricing information may review the current contract (Enter **T0024**) at <http://www.state.nj.us/treasury/purchase/contracts.htm>.

1.3 KEY EVENTS

1.3.1 ELECTRONIC QUESTION AND ANSWER PERIOD

The Purchase Bureau will accept questions and inquiries from all potential bidders electronically via web form. To submit a question, please go to Current Bid Opportunities webpage or to <http://ebid.nj.gov/QA.aspx>

Questions should be directly tied to the RFP and asked in consecutive order, from beginning to end, following the organization of the RFP. Each question should begin by referencing the RFP page number and section number to which it relates.

Bidders are not to contact the Using Agency directly, in person, by telephone or by email, concerning this RFP.

The cut-off date for electronic questions and inquiries relating to this RFP is indicated on the cover sheet. Addenda to this RFP, if any, will be posted on the Purchase Bureau website after the cut-off date (see Section 1.4.1. of this RFP for further information.)

1.3.2 SUBMISSION OF BID PROPOSAL

In order to be considered for award, the bid proposal must be received by the Purchase Bureau of the Division of Purchase and Property at the appropriate location by the required time. **ANY BID PROPOSAL NOT RECEIVED ON TIME AT THE LOCATION INDICATED BELOW WILL BE REJECTED. THE DATE AND TIME IS INDICATED ON THE COVER SHEET. THE LOCATION IS AS FOLLOWS:**

BID RECEIVING ROOM - 9TH FLOOR
PURCHASE BUREAU
DIVISION OF PURCHASE AND PROPERTY
DEPARTMENT OF THE TREASURY
33 WEST STATE STREET, P.O. BOX 230
TRENTON, NJ 08625-0230

Directions to the Purchase Bureau can be found at the following web address:
<http://www.state.nj.us/treasury/purchase/directions.htm>.

Note: Bidders using USPS Regular or Express mail services should allow additional time since USPS mail deliveries are not delivered directly to the Purchase Bureau.

Procedural inquiries on this RFP may be directed to RFP.procedures@treas.state.nj.us. This e-mail address may also be used to submit requests to review bid documents. The State will not respond to substantive questions related to the RFP or any other contract via this e-mail address.

To submit an RFP or contract related question, go to the Current Bidding Opportunities webpage or to <http://ebid.nj.gov/QA.aspx>.

1.4 ADDITIONAL INFORMATION

1.4.1 ADDENDA: REVISIONS TO THIS RFP

In the event that it becomes necessary to clarify or revise this RFP, such clarification or revision will be by addendum. Any addendum to this RFP will become part of this RFP and part of any contract awarded as a result of this RFP.

ALL RFP ADDENDA WILL BE ISSUED ON THE DIVISION OF PURCHASE AND PROPERTY WEB SITE. TO ACCESS ADDENDA, SELECT THE BID NUMBER ON THE BIDDING OPPORTUNITIES WEB PAGE AT THE FOLLOWING ADDRESS:

[HTTP://WWW.STATE.NJ.US/TREASURY/PURCHASE/BID/SUMMARY/BID.SHTML](http://www.state.nj.us/treasury/purchase/bid/summary/bid.shtml).

There are no designated dates for release of addenda. Therefore interested bidders should check the Purchase Bureau "Bidding Opportunities" website on a daily basis from time of RFP issuance through bid opening.

It is the sole responsibility of the bidder to be knowledgeable of all addenda related to this procurement.

1.4.2 BIDDER RESPONSIBILITY

The bidder assumes sole responsibility for the complete effort required in submitting a bid proposal in response to this RFP. No special consideration will be given after bid proposals are opened because of a bidder's failure to be knowledgeable as to all of the requirements of this RFP.

1.4.3 COST LIABILITY

The State assumes no responsibility and bears no liability for costs incurred by a bidder in the preparation and submittal of a bid proposal in response to this RFP.

1.4.4 CONTENTS OF BID PROPOSAL

Subsequent to bid opening, all information submitted by bidders in response to the bid solicitation is considered public information, except as may be exempted from public disclosure by the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., and the common law. If the State proposes to negotiate and/or pursue a Best and Final Offer, bid proposals will not be made public until the Letter of Intent to Award is issued.

A bidder may designate specific information as not subject to disclosure when the bidder has a good faith legal/factual basis for such assertion. The State reserves the right to make the

determination and will advise the bidder accordingly. The location in the bid proposal of any such designation should be clearly stated in a cover letter. **The State will not honor any attempt by a bidder either to designate its entire bid proposal as proprietary and/or to claim copyright protection for its entire proposal.**

By signing the cover sheet of this RFP, the bidder waives any claims of copyright protection set forth within the manufacturer's price list and/or catalogs. The price lists and/or catalogs must be accessible to State using agencies and cooperative purchasing partners and thus have to be made public to allow all eligible purchasing entities access to the pricing information.

All bid proposals, with the exception of information determined by the State or the Court to be proprietary, are available for public inspection. Interested parties can make an appointment with the Purchase Bureau to inspect bid proposals received in response to this RFP.

1.4.5 PRICE ALTERATION

Bid prices must be typed or written in ink. Any price change (including "white-outs") must be initialed. Failure to initial price changes shall preclude a contract award from being made to the bidder.

1.4.6 BID ERRORS

In accordance with N.J.A.C. 17:12-1.22, "Bid Errors," a bidder may withdraw its bid as follows:

A bidder may request that its bid be withdrawn prior to bid opening. Such request must be made, in writing, to the Supervisor of the Business Unit. If the request is granted, the bidder may submit a revised bid as long as the bid is received prior to the announced date and time for bid opening and at the place specified.

If, after bid opening but before contract award, a bidder discovers an error in its proposal, the bidder may make written request to the Supervisor of the Business Unit for authorization to withdraw its proposal from consideration for award. Evidence of the bidder's good faith in making this request shall be used in making the determination. The factors that will be considered are that the mistake is so significant that to enforce the contract resulting from the proposal would be unconscionable; that the mistake relates to a material feature of the contract; that the mistake occurred notwithstanding the bidder's exercise of reasonable care; and that the State will not be significantly prejudiced by granting the withdrawal of the proposal. Note: a PB-36 complaint form may be filed and forwarded to the Division's Contract Compliance and Administration Unit (CCAU) for handling. A record of the complaint will also be maintained in the Division's vendor performance file for evaluation of future bids submitted.

All bid withdrawal requests must include the bid identification number and the final bid opening date and sent to the following address:

Department of the Treasury
Purchase Bureau, PO Box 230
33 West State Street – 9th Floor
Trenton, New Jersey 08625-0230
Attention: Supervisor, Business Unit

If during a bid evaluation process, an obvious pricing error made by a potential contract awardee is found, the Director shall issue written notice to the bidder. The bidder will have five days after receipt of the notice to confirm its pricing. If the vendor fails to respond, its bid shall be considered withdrawn, and no further consideration shall be given it.

If it is discovered that there is an arithmetic disparity between the unit price and the total extended price, the unit price shall prevail. If there is any other ambiguity in the pricing other than a disparity between the unit price and extended price and the bidder's intention is not readily discernible from other parts of the bid proposal, the Director may seek clarification from the bidder to ascertain the true intent of the bid.

1.4.7 JOINT VENTURE

If a joint venture is submitting a bid proposal, the agreement between the parties relating to such joint venture should be submitted with the joint venture's bid proposal. Authorized signatories from each party comprising the joint venture must sign the bid proposal. A separate Ownership Disclosure Form, Disclosure of Investigations and Actions Involving Bidder, Affirmative Action Employee Information Report, MacBride Principles Certification, and Business Registration or Interim Registration must be supplied for each party to a joint venture.

1.5 PRICE LIST AND/OR CATALOG PRICING

The bidder's signature guarantees that prices, set forth within their submitted price lists and/or per four-ounce cup item, will govern for the period of the contract as detailed within this RFP. The bidder also acknowledges that, notwithstanding any reference to price escalation clauses, FOB shipping point, and shipping charges contained in their preprinted price lists, catalogs, and/or literature, such references will not be part of any State contract awarded as a result of this RFP.

2.0 DEFINITIONS

2.1 GENERAL DEFINITIONS

The following definitions will be part of any contract awarded or order placed as result of this RFP.

Addendum - Written clarification or revision to this RFP issued by the Purchase Bureau.

Amendment - A change in the scope of work to be performed by the contractor after contract award. An amendment is not effective until signed by the Director, Division of Purchase and Property or his/her designee.

Bidder – A vendor submitting a bid proposal in response to this RFP.

Contract - This RFP, any addendum to this RFP, the bidder's bid proposal submitted in response to this RFP and the Division's Notice of Acceptance.

Contractor - The contractor is the bidder awarded a contract.

Director - Director, Division of Purchase and Property, Department of the Treasury. By statutory authority, the Director is the chief contracting officer for the State of New Jersey.

Division - The Division of Purchase and Property.

Joint Venture – A business undertaking by two or more entities to share risk and responsibility for a specific project.

May - Denotes that which is permissible, but not mandatory.

Request for Proposal (RFP) - This document, which establishes the bidding and contract requirements and solicits bid proposals to meet the purchase needs of [the] Using Agency[ies], as identified herein.

Shall or Must - Denotes that which is a mandatory requirement.

Should - Denotes that which is recommended, but not mandatory.

State - State of New Jersey

Using Agency[ies]- The entity[ies] for which the Division has issued this RFP.

2.2 CONTRACT SPECIFIC DEFINITIONS

AMS- Agricultural Marketing Service- Homepage is available at: <http://www.ams.usda.gov/>. The Agricultural Marketing Service includes six commodity programs--Cotton, Dairy, Fruit and Vegetable, Livestock and Seed, Poultry, and Tobacco. The programs employ specialists who provide standardization, grading and market news services/reports for those commodities. They enforce such Federal Laws as the Perishable Agricultural Commodities Act and the Federal Seed Act.

AOAC Methods of Analysis- One of the three methods validation programs promulgated by the Association of Analytical Communities (AOAC). Go to <http://www.aoac.org> for additional information.

A.R.O.- After Receipt of Order

Campylobacter jejuni- The leading cause of bacterial diarrhea. Contaminates raw chicken and milk. Can be cross-contaminated into uncooked foods. The bacteria are often carried by healthy cattle and by flies on farms.

CDC- Center for Disease Control can be accessed via: <http://www.cdc.gov/>.

Chilled- Produce having an internal temperature of greater than 28°F (-2.2°C) and is held under refrigerated storage temperatures which do not exceed 38°F.

Code of Federal Regulations- a.k.a.--CFR, the codification of general and permanent rules published in the Federal Registrar by the executive departments and agencies of the Federal Government.

Contaminant- A physical, chemical or biological substance which is available at a level so high as to have a correlated deleterious effect on human and/or animal and /or the environment's health.

Country of Origin Labeling- Perishable agricultural commodities labeled to identify the country in which they were produced.

Delivery- A.R.O./F.O.B. bringing products ordered into the storage area of the Using Agency/Cooperative Purchasing Member's facility by manufacturer or distributor's fleet within the time frame designated in the RFP.

E-coli- Escherichia Coli; bacterial pathogen that causes food poisoning [sometimes fatal] in human consumers following consumption of food or water contaminated with microscopic amounts.

FDA- Food and Drug Administration information is available at: <http://www.fda.gov/default.htm>.

F.O.B.- Free on Board; the shipment passes from seller to buyer, payment for freight is included in bid price; no freight charges are assessed against buying agency.

Frozen- Product has an internal temperature of less than 28°F (-2.2°C) and is stored at less than 0°F (-17.8°C).

Grade- The sum of the characteristics, including but not limited to the quality and condition of the commodity at the time of grading.

HAACP- Hazard Analysis Critical Control Point is a systematic approach to the identification, evaluation, and control of product safety hazards that are a biological, chemical, or physical agent that is reasonably likely to cause illness or injury in the absence of its control. This information is available at: <http://www.cfsan.fda.gov/~lrd/haccp.html>.

Lysteria monocytogenes- found in such foods as milk, cheeses (particularly soft-ripened varieties), ice cream, raw vegetables, fermented raw-meat sausages, raw and cooked poultry, raw meats (all types), and raw and smoked fish. Its can grow at temperatures as low as 3°C.

Microbial Food Safety Hazards- Cause contamination of fresh produce and cause illness. May be caused by produce handler's health and hygiene, sanitary condition of field, facility, transportation containers, post-harvest water, fertilizer, manure or other

Producer Price Index- A family of indexes compiled by the Bureau of Labor Statistics. (PPI) Index of commonly produced items, at various stages of processing, that fluctuates and measures price changes from the perspective of the seller. This is an output price index. The PPI homepage is available at <http://www.bls.gov/ppi>. Posted "preliminary figures" will be used to project pricelist revisions every six months for the contract term and any extensions thereof. A brief explanation of how to access this information follows:

Current (08/07) DATA extraction:

At the PPI homepage, scroll down to the heading Get detailed PPI Statistics
Select the second bulleted sub-heading Create Customized Tables (one screen)
Choosing the top link: Industry Data .

From the new screen that displays.

- i.) Select an Industry 31152 Ice Cream and frozen dessert mfg, as well as*
 - ii.) Select one or more Products 31152-31152 Ice Cream and frozen dessert mfg.*
- These selections will pool together data on file.

You can refine this data further by clicking at the arrow:

More Formatting Options —▶

This will bring you to a new page display ---enabling you to sort out much of the data not needed.

The "Original Data Value" and the "12 Months Percent Change" should be checked off with the **Specify year range** set manually by the bidder/contractor to reflect the months in review. If chosen, graphs can also be displayed.

Salmonella- Food-borne bacteria that causes food poisoning in humans.

USDA- United States Department of Agriculture. Federal certification/standards for food safety, sanitary conditions, nutrition and research for agricultural technology. Maintains meat-grading service denoting quality of meat [determined by the class of animal, the conformation and amount of exterior fat]. Information available at www.usda.gov.

Zone- Using Agencies have been pre-divided into delivery/usage zones; North, Central and South. The vendor may be contracted to service one zone, two zones or all three zones dependent upon their offerings and the results of the bid review.

3.0 COMMODITY DESCRIPTION/SCOPE OF WORK

3.1 STANDARDIZED ITEM DESCRIPTIONS AND REGULATIONS

All frozen desserts shall be clean and wholesome and manufactured in accordance with the regulations establishing definition and commercial item description CID A-A-20342, effective February 10, 2003 et seq., as prescribed by the U.S. Department of Agriculture (USDA).

Dairy ingredients used in all product types herein shall be those permitted by the Definitions and Standards of Identity for Frozen Desserts as found in 21CFR Part 135; April 1, 2003 et seq. and the applicable requirements of the latest revision of the "Grade A Pasteurized Milk Ordinance."

Frozen Dairy Products {ice cream, sherbet and novelties} are to be graded or inspected by the Dairy Grading Branch (DBG) Dairy Program (DP), Agricultural Marketing Service (AMS) and U.S. Department of Agriculture (USDA).

Frozen Yogurt Products are to be made from yogurt manufactured in compliance with the USDA Specifications and the Food and Drug Administration's Standard of Identity for Yogurt (21 CFR Part 131.200), Lowfat Yogurt (21 CFR Part 131.203) and Nonfat Yogurt (21 CFR Part 131.206) and the provisions of the Federal Food, Drug and Cosmetic Act.

Furthermore, all frozen dairy products for which there are no USDA grades presently established in an independent CID/CFR shall conform to all applicable requirements of 7CFR58 (January 1, 2003 et seq.)

3.1.1 ICE CREAM

The ice cream shall be manufactured under commercial sanitary conditions and in compliance with all Federal and New Jersey State requirements. Where a variance exists between the State and Federal regulations, the Vendor shall comply with the more stringent of regulations promulgated. Ice cream shall be nutritious {absent of foreign substances}, wholesome and possess a pleasing and desirable flavor and appearance that is characteristic of the flavor specified. The body and texture shall be fine, velvety smooth and firm and carry a consistent appearance of creaminess throughout. Ice cream shall be free from palpable saltiness, sandiness, dehydration or ice crystals. The ice cream shall melt into a creamy smooth, crème anglais sauce-like consistency when exposed to room temperature.

3.1.2 VANILLA

Vanilla ice cream shall contain not less than 5 ounces of natural vanilla extract or flavor, single fold, or the proportionate quantity of a higher fold natural vanilla extract or flavor, for each five gallons of ice cream mix.

Vanilla-flavored ice cream shall contain not less than two and one-half ounces of vanilla-vanillin extract two-fold, or the proportionate quantity of higher fold vanilla-vanillin extract, for each five gallons of manufactured ice cream mix.

3.1.3 SINGLE VARIETY OTHER THAN PLAIN VANILLA

For ice cream with fruit(s), nut(s), or chocolate, the ice cream shall be manufactured under commercial sanitary conditions and in full compliance with 21CFR Part 135; April 1, 2003 et seq. Ice cream shall be nutritious and shall be wholesome and possess a pleasing and desirable flavor and appearance that is characteristic of the flavor specified. The body and texture of the base ice cream product shall be as described in vanilla above. The percent of natural flavoring ingredients in the following shall be as specified here below:

Chocolate solids - not - fat, not less than	1.5 percent
Nut meats, not less than	2.0 percent
Citrus, not less than	2.0 percent
Cherry and berry, not less than	6.0 percent
Other fruit, not less than	10.0 percent
<i>The ice cream varieties in the table above may be enhanced with additional natural or artificial flavor extracts.</i>	

3.1.4 VARIEGATED

Variegated shall be vanilla ice cream with another flavor blended throughout (examples are) vanilla fudge, butterscotch swirl, raspberry ripple, etc.

3.1.5 ICE MILK

Frozen ice milk shall be wholesome and possess a pleasing and desirable flavor and appearance characteristic of the flavor specified. The body and texture shall be reasonably smooth and creamy. The flavoring requirements for ice milk shall be the same as set forth for ice cream.

3.1.6 SHERBET

Frozen fruit sherbet shall be wholesome and possess a pleasing a desirable flavor and appearance, characteristic of the flavor specified. The body and texture shall be firm and smooth; free from surface crustation, brittleness, syrup "bleeding" and large ice crystals.

3.1.7 WATER ICES

Water ice products shall be wholesome and possess a pleasing and desirable flavor and appearance, characteristic of the flavor specified. The body and texture shall be of uniform color, flavor, and firmness; free from surface crustation, brittleness, syrup "bleeding" and large ice crystals.

3.1.8 FROZEN YOGURT

Frozen yogurt shall be wholesome and prepared using the USDA Specifications for Yogurt, Nonfat Yogurt and Lowfat Yogurt, dated January 19, 2001. Frozen yogurt products shall possess a pleasant, clean acid flavor with smooth, homogeneous, custard-like body and texture characteristics, which are free from surface crustation, brittleness, syrup "bleeding" and large ice crystals.

3.2 BRAND(S) SUPPLIED UNDER CONTRACT

Important:

The bidder must include on its price list and affix to its price sheet for each line item (00001, 00003 and 00005: 4 oz cups), the brand name(s) of the ice cream/frozen novelties to be supplied along with the manufacturer's name and address. Failure to do so may result in the rejection of its bid proposal. The price list shall be provided on the bidder's letterhead and shall follow the format illustrated in Section 4.4.4 of this RFP. The name(s) and location(s) for the manufacturers of the 4 oz cups shall also be provided on the bidder's letterhead.

3.3 NUTRITIONAL DATA

The bidder should furnish nutritional data sheets for each novelty and ice cream variety with their bid. Nutritional information must be filed with the Purchase Bureau prior to the award. Subsequent to award and during the course of the contract term [upon the request of the State of New Jersey] the vendor shall provide nutritional data sheets to the State within five (5) days of the State's request for this information.

3.4 PALATABILITY TESTING

The State reserves the right to perform palatability testing of bid samples and of products delivered throughout the contract term.

A test panel is appointed by the Chief, DSS (Distribution and Support Services) Quality Assurance Unit. Palatability testing will be supervised and conducted by the DSS Quality Assurance Unit. The Hedonic Scale Method of measuring food preferences will be used.

Testing shall be conducted in an impartial atmosphere with a panel not informed of the brand names, vendors and manufacturers until the award recommendation is approved by the Director. In the event a product bid has been determined not to comply with the bid proposal specifications and is determined not to be acceptable, that product will be immediately deleted from the vendor's contract. The contractor will be afforded the opportunity to provide an equal product in a timely manner at the contracted price, terms and conditions.

3.5 PACKAGING & PACKING

Cartons/cases are to be plainly marked as to State Contract number, content, weight, expiration/ "use by" date and the "**KEEP FROZEN**" storage requirement.

3.6 GUARANTEES

The Contractor must guarantee that all products offered and awarded under this contract shall have applicable FDA approval for distribution as a food item. All products must have, at a minimum, a label containing an easily decoded product expiration date and a product lot number. A fact sheet that explains the package coding must be supplied to the Using Agencies/Cooperative Members.

Through their signature, each bidder guarantees that NO product, that is adulterated or misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act, or any regulation of the Federal Food and Drug Administration, shall be provided to the State Agencies or Cooperative Members through the awarded contract(s).

3.7 FOODBORNE PATHOGENS AND NOTIFICATION THEREOF

Vendor is required to immediately contact and advise the receiving agency(ies) of any, [and forward all] national, state, or local Health Department, Food Safety and Inspection Service/USDA/FDA food borne pathogen/agent advisories, Class I and/or Class II recalls or Center for Disease Control (CDC) alerts [as they become aware of them] relating to products they (have) provide(d) for the term of the contract:

(for example, but not limited to: Campylobacter jejuni, E-coli, Salmonella, Vibrio, Lysteria monocytogenes, Bovine Spongiform Encephalopathy, etc.,)

3.8 QUALITY CONTROL & CONTAMINANTS

The manufacturer of frozen desserts (ice cream and novelties and components) shall be responsible for compliance with 21 CFR Ch. 1 Part 101, 21 CFR Ch. 1 Part 104, 21 CFR Ch. 1 Part 105, 21 CFR Ch. 1 Part 110, 21 CFR Ch. 1 Parts 120 regarding Hazard Analysis and Critical Control Point (HACCP) systems-quality controls, 21 CFR Ch. 1 Part 130 through 136, 21 CFR Ch. 1 Part 150, 21 CFR Ch. 1 Part 165, etc.; The Food and Drug Act of 1906, the Federal Food, Drug and Cosmetic Act [FD&C ACT] of 1938; the Food Additive Amendment of 1958 and Color Additive Amendments of 1960, the Orphan Drug Act of 1983; the Nutrition Labeling and Education Act (NLEA) of 1990; and all other applicable guidelines as determined by the USDA FDA/CFSAN (Center for Food Safety and Applied Nutrition), etc.

Should biological, chemical or environmental contaminants be found (in products purchased under the contract(s) resulting from this RFP), that may be deleterious to human health, the product affected shall be removed, with re-imbusement and/or replacement by the Contractor.

3.8.1 SOURCING OF RAW MATERIALS & INGREDIENTS

The State may require certification regarding the purity of nutrients, additives, ingredients, enrichments, raw materials or and/or components. The Director may require certification from the Contractor (a bona fide officer of the company) along with documentation that food-grade or safe-for-human levels have not been exceeded; therefore, the raw materials, ingredients, etc. used during the manufacture of the finished products, comply with U.S. federal guidelines, HAACP protocols, FDA approvals, etc., and that no industrial-grade ingredients, etc., were utilized in the products.

3.9 DELIVERY

Delivery frequency shall be scheduled upon the arrangement between each Using Agency and the Vendor within each Zone that the vendor is contracted to supply product to as specified within the RFP text and on the Bidder's Price Sheet. Delivery frequency shall be on the average, but not limited to, one or two delivery(ies) per week per facility. *Below each Zone table, previous delivery scheduling information has been provided from those using agencies that have provided the Purchase Bureau with their preference(s) in advance.*

Contractor carrier personnel shall be subject to and shall comply with all security regulations and procedures for all prisons and hospitals. This may include body and vehicle searches for contraband.

AS A GENERAL RULE: Contractors must notify prisons twenty-four (24) hours prior to delivery. Failure to provide this advance notification may cause rejection of the delivery at the contractor's expense.

Vendor is contracted and authorized to deliver to only those agencies within the zone(s) for which they specifically have been awarded.

The examples of locations provided below will change as programs are added, changed, expanded, closed and/or removed from the State Budget. Therefore, the examples of locations are subject to change and are not finite.

3.10 NORTH ZONE

Bergen County	Morris County	Union County
Essex County	Passaic County	Warren County
Hudson County	Sussex County	

As per **Line Item #0001** and **Line Item #0002** on the bidders' price sheet:

Listed below is a sample of the State Using Agencies that may be interested in utilizing the contract for this zone:

Sample of State of NJ North Zone Delivery Points

State Agency & County Located In	Population Count/#	Facility Address City, State, Zip Code	Phone Number	Fax Number
Greystone Park Psychiatric Hospital Morris County	646	Central Av Greystone Park, NJ 07950	973-538-1800 EXT 4309	973-538-1053
North Jersey Development Center Passaic County	445	Minnisink Rd Totowa, NJ 07511	973-256-1700 EXT 2339	973-256-7651
Cedar Grove Residential Center Essex County	30	240 Grove Avenue Cedar Grove, NJ 07009	201-857-0200	
Veterans Memorial Home PARAMUS /Bergen County	336	1 Veterans Drive Paramus, NJ 07653- 0608	201-634-8200	201-967-8658
Northern State Prison Essex County	2648	168 Frontage Road Newark, NJ 07114	973-465-0068	973-274-9113
Warren Residential Community Home Warren County	34	509 Brass Castle Rd Oxford, NJ 07863	908-453-2032	908-453-4234
Essex Residential Community Home Essex County	30	461-63 Central Av Newark, NJ 07107	973-648-7078	973-648-6133
Green Residential Community Home Passaic County	32	1311 Sloatsburg Rd Ringwood, NJ 07456	973-962-4693 Ext: 27	973-962-4525
East Jersey State Prison Middlesex County	1928	U.S. Rt 1/ Rahway Av Rahway, NJ 07065	732-499-5010	732-499-2078
Woodbridge Developmental Center Middlesex County	613	Rahway Avenue Woodbridge, NJ 07095	732-815-4880	
Woodbridge Developmental Child Diagnostic Center , Middlesex County	35	15 Paddock St Avenel, NJ 07001	732-499-5050	732-815-4874
Adult Diagnostic Center Middlesex County	679	8 Production Way Avenel, NJ 07001	732-574-2250	732-396-8214
Veterans Memorial Home MENLO PARK /Middlesex County	332	132 Evergreen Road Edison, NJ 08818- 3013	732-452-4100	732-603-3016
Voorhees Residential Community Home Hunterdon County	27	201 Route 513 Glen Gardner, NJ 08826	908-638-4677	908-638-4670

G.W. Hagedorn Psychiatric Hospital Hunterdon County	181	200 Sanitorium Rd Glen Gardner, NJ 08826	908-537-2141 EXT 2224	908-537-3149
Elizabeth Day Program Union County	40	208 Commerce Pl Elizabeth, NJ 07201	908-965-2640	908-292-9743
Liberty Hudson Day Program Hudson County		30-32 Central Av. Jersey City, NJ 07206	201-217-7135	201-217-7238
Dept of Children & Families Regional School Essex County Campus		395-397 No. 5th St Newark, NJ 07101	973-648-4333	973-648-4254
Independence High School Essex County		15 Smalley Terrace Irvington, NJ 07111	973-372-4473	973-372-3324
Dept of Children & Families Regional School Bergen County Campus		374 E. Ridgewood Ave. Paramus, NJ 07652	201-261-6231	201-261-2180
Dept of Children & Families Regional School Hudson County Campus		40 Millridge Rd Secaucus, NJ	201-865-4913	201-865-9434
Dept of Children & Families Regional School Morris County Campus		15 Jean St. Morristown, NJ 07960	973-631-6410	973-631-6415
Dept of Children & Families Regional School Passaic County Campus		160 Minnisink Rd. Totowa, NJ 07512	973-256-3337	973-256-7431
Dept of Children & Families Regional School Wanaque Campus— Passaic County		1433 Ringwood Ave. Haskell, NJ 07420	973-839-1909	973-839-3889
Dept of Children & Families Regional School Union County Campus		1524 Terrill Rd. Scotch Plains, NJ 07076	908-322-1641	908-322-9455
Dept of Children & Families Regional School Warren County Campus		540 Rt. 57E Port Murray, NJ 07865	908-689-4650	908-689-1017

Deliveries to Elizabeth Day Program require 24 hour notice and is available week days 9 AM -12 Noon at the front entrance/elevator.

Deliveries to the Essex Residential Community Home dock require 24 hour notification and are available on Tuesdays from 8AM – 10 AM.

Deliveries to the Green Residential Community Home require 24 hour notification and are available from 6 AM until 1 PM through the kitchen entrance abutting the driveway.

Deliveries to the Liberty Hudson Day Program require 24 hour notification and are available weekdays 9 AM – 3 PM.

Deliveries to the Voorhees Residential Community Home are available on Wednesday at the front porch boardwalk.

Deliveries to the Warren Residential Community Home are available on Wednesday/Thursday and must be unloaded in the driveway. Enter from driveway through the kitchen entrance.

3.11 CENTRAL ZONE

Burlington County	Middlesex County	Ocean County
Hunterdon County	Monmouth County	Somerset County
Mercer County		

As per **Line Item #0003** and **Line Item #0004** on the bidders' price sheet:

Listed below is a sample of the State Using Agencies that may be interested in utilizing the contract for this zone:

Sample of State of NJ Central Zone Delivery Points

State Agency & County Located In	#	Facility Address	Phone Number	Fax Number
Arthur Brisbane Child Treatment Center Monmouth County	30	Allaire Rd Farmingdale, NJ 07727	908-938-5061	908-938-9202
Green Brook Regional Center Somerset County	123	275 Greenbrook Road Green Brook, NJ 08812	732-968-6000	732-968-0373
Hunterdon Developmental Center Hunterdon County	637	40 Pittstown Rd Clinton, NJ 08809-4003	908-735-4031	
New Lisbon Developmental Center Burlington County	708	Route 72 New Lisbon, NJ 08064	609-726-1000 EXT 4139/4140	609-726-1159
Trenton Psychiatric Hospital Mercer County	317	Sullivan Way West Trenton, NJ 08628	609-633-1619	609-396-5701
Forensic - Part of Trenton Psychiatric Mercer County	129	Sullivan Way West Trenton, NJ 08628	609-633-1619	609-396-5701
Katzenbach School for the Deaf Mercer County	230	320 Sullivan Way West Trenton, NJ 08628	609-530-3117	609-530-5791
Ewing Residential Center Mercer County	30	1610 Stuyvesant Avenue Trenton, NJ 08618	609-530-3350	
A.C. Wagner Youth Correctional Burlington County	1331	Ward Av. Bordentown, NJ 08505	609-298-0500	609-298-2172
Edna Mahan Correctional Facility for Women , Hunterdon County	1112	30 County Route 513 Clinton, NJ 08809	908-735-7111	908-735-5473
Garden State Youth Correctional Facility Burlington County	1674	Highbridge Road Yardville, NJ 08620	609-298-6300	609-324-9460
Mid-State Correctional Facility Burlington County	638	Range Road Wrightstown, NJ 08562	609-723-4221	609-723-1091
Mountain View Youth Correctional Facility Hunterdon County	1250	31 Petticoat Lane Annandale, NJ 08801	908-638-6191	908-638-9881
New Jersey State Prison Mercer County	1955	3rd and Federal Streets Trenton, NJ 08625	609-292-9700	609-777-8366
Stabilization & Reintegration Program Burlington County	116	Route 72 New Lisbon, NJ 08064	609-726-0804	609-726-0896
Albert Elias Residential Community Home , Mercer County	20	188 Lindbergh Rd Hopewell, NJ 08525	609-466-0740	609-466-4612
D.O.V.E.S. Residential Community Home Burlington County	12	307 Burlington St. Bordentown, NJ 08505	609-324-3617	609-324-0955
Edison Prep Residential Community Home , Mercer County	24	1212 Edgewood Av. Trenton, NJ 08618	609-777-3292	609-777-2974
Fresh Start Residential Community Home Monmouth County	28	4240 Atlantic Av; Farmingdale, NJ 07727	732-938-2500	732-938-4678
Valentine Residential Community Home Burlington County	30	307 Burlington St Bordentown, NJ 08505	609-324-3617	609-324-0955

Johnstone Campus Burlington County	290	307 Burlington St Bordentown, NJ 08505	609-324-6102	609-324-3221
Monmouth Day Program Monmouth County	16	114 Hwy 33 Manalapan, NJ 07726	732-577-8509	732-577-1647
NJ Training School for Boys Middlesex County	300	State Home Rd, Box 500 Monroe Twp, NJ 08831	732-521-0030 Ext.: 243	732-521-1738
Central Reception & Assignment Facility Mercer County		721 Bear Tavern Rd Trenton, NJ 07628	609-530-2758	609-530-2756
Dept of Children & Families Regional School Burlington County Campus		704 Woodlane Rd. Mt. Holly, NJ 08060	609-267-7595	609-267-1931
Capital Academy –Lumberton Campus Burlington County		20 Pioneer Blvd. Mount Holly, NJ 08060	609-953-5608	609-953-2416
Klemmer House Burlington County		20 Pioneer Blvd. Mount Holly, NJ 08060	609-261-5600	609-949-7429
Dept of Children & Families Regional School Camden County Campus		210 Evesham Rd. Cherry Hill, NJ 08003	856-696-6830	856-696-6520
(KIT) Kids in Transition, Excel, Insight Camden Virtua Hoapital Camden County		1000 Atlantic Ave. Camden, NJ 08104	856-541-9212	856-541-5546
Dept of Children & Families Regional School Mercer County Campus		1600 Stuyvesant Ave. Trenton, NJ 08618	609-530-4242	609-530-3393
Youth Services Center Mercer County		6 Esther Ave. Trenton, NJ 08619	609-530-4142	609-530-4277
Ann Klein Forensic Center Mercer County		Stuyvesant Ave West Trenton , NJ 08628	609-633-0883	609-633-2817
Dept of Children & Families Regional School Middlesex County Campus		1377 Rahway Ave. Avenel, NJ 07001	732-499-5035	732-499-0294
Dept of Children & Families Regional School Monmouth County Campus		1076 Wayside Rd Ocean, NJ 07712	732-493-4470	732-493-0944
Dept of Children & Families Regional School Somerset County Campus		1600 Brooks Blvd. Hillsborough, NJ 08844	908-704-3060	908-704-3067

Deliveries to State Prison in Trenton must be made between 8:00 A.M. – 11:00 A.M. and 1:00 P.M. – 3:00 P.M. Custodial requirements demand adherence to this schedule. Deliveries will be accepted at the receiving bay on the Third Street side, Trenton. The empty vehicle cannot exceed 11 feet high and the maximum width must not exceed 10 feet 4 inches.

Deliveries to Albert Elias Residential Community Home require 24 hour notification and are available Monday/Friday from 7 AM until 12 Noon through the right side entrance.

Deliveries to Fresh Start Residential Community Home require 24 hour notification and are available Tuesday, Wednesday and Thursday before 2 PM through the back door off of the kitchen.

Deliveries to Johnstone Campus require 24 hour notification and are available 7 AM until 3:30 PM.

Deliveries to Monmouth Day Program require 24 hour notification and are available on Thursday from 9 AM until 11 AM through the rear kitchen entrance.

Deliveries to New Jersey Training School for Boys require 24 hour notification and are available on weekdays. Directions to the secure facility are obtained at the gate entrance.

***NOTE that the following agencies, although physically located in Central Zone counties will be part of the South Zone, due to their proximity to the South Zone:**

Pinelands Residential Community Home, 3016 Route 563, Chatsworth, NJ 08019
Ocean Residential Community Home, Game Farm Road, Forked River, NJ 08731
Vision Quest, 108 Route 72, New Lisbon, NJ 08064
New Lisbon Developmental Center, PO Box 130, Route 72, New Lisbon, NJ 08064

3.12 SOUTH ZONE AGENCIES

Atlantic County	Cape May County	Gloucester County
Camden County	Cumberland County	Salem County

As per **Line Item #0005** and **Line Item #0006** on the bidders' price sheet:

Listed below is a sample of the State Using Agencies that may be interested in utilizing the contract for this zone:

Sample of State of NJ Southern Zone Delivery Points

State Agency & County Located In	#	Facility Address	Phone Number	Fax Number
Ancora Psychiatric Hospital Camden County	619	202 Spring Garden Rd Ancora, NJ 08037-9699	609 561-1700	609 567-7397
Vineland Developmental Center Cumberland County	658 + 58 Spec pop	1676 East Landis Av Vineland, NJ 08360	609-696-6000 609-696-6155 609-696-6154	609-696-6056
Woodbine Developmental Center Cape May County	587	1175 DeHirsh Av Woodbine, NJ 08270	609-861-2164	609-861-0081
Vineland Residential Center Cumberland County	30	2000 Maple Avenue Vineland, NJ 08360	609-696-6115	609-696-6620
Veterans Memorial Home VINELAND , Cumberland County	280	524 North West Blvd Vineland, NJ 08360- 2895	856-405-4200	856-696-6885
Bayside State Prison Cumberland County	2304	4293 Route 77 Leesburg, NJ 08327	856-785-0040	856-785-0377
Riverfront State Prison Camden County	1009	Delaware Av. & Elm St. Camden, NJ 08101	856-225-5700	856-225-5731
Southern State Correctional Facility Cumberland County	1946	4295 Route 47 Delmont, NJ 08314	856-785-1300	856-785-0396
South Woods State Prison Cumberland County	3360	215 South Burlington Rd. Bridgeton, NJ 08302	856-459-7000	856-459-7531
Camden Community Service Center Camden County	50	555 Atlantic Ave Camden, NJ 08103	856-614-2658	856-614-2670
Campus Program Camden County	40	508 Lakeland Rd Blackwood, NJ 08012	856-227-0960	856-228-4208
Manor Woods Residential Community Home , Atlantic County	24	RR #20 Mays Landing, NJ 08330	609-625-1842	609-625-8630

Ocean Residential Community Home Monmouth County	30	Game Farm Road Forked River, NJ 08731	609-693-5498	609-693-1854
Pinelands Residential Community Home Burlington County	18	3016 Route 563 Chatsworth, NJ 08019	609-518-3080	609-726-9678
Atlantic Youth Center (Harborfields) Atlantic County	34	800 A Buffalo Av Egg Harbor, NJ 08215	609-965-5200	609-965-7962
Life Skills & Leadership Academy Camden County	40	800 Carranza Rd Tabernacle, NJ 08088	609-268-1424	609-268-6527
New Lisbon Developmental Center Burlington County	708	Route 72 New Lisbon, NJ 08064	609-726-1000 EXT 4139/4140	609-726-1159
Stabilization & Reintegration Program Burlington County (Developmental Center may order for program)	116	Route 72 New Lisbon, NJ 08064	609-726-0804	609-726-0896
Vision Quest Burlington County		108 Route 72 New Lisbon, NJ 08064	609-894-4856	
Dept of Children & Families Regional School Atlantic County Campus		2562 Tinton Rd. EggHarbor Twp.,NJ 08234	609-645-6748	609-645-3773
Dept of Children & Families Regional School Cape May County Campus		131 Crest Haven Rd. Cape May, NJ 08210	609-463-4870	609-465-4104
Dept of Children & Families Regional School Cumberland County Campus		928 West Sherman Av. Vineland, NJ 08360	856-696-6830	856-696-6520
Dept of Children & Families Regional School Gloucester County Campus		842 Glassboro Rd. Williamstown, NJ 08094	856-629-2400	856-728-5039
Dept of Children & Families Regional School Ocean County Campus		1141 Old Freehold Rd. Toms River, NJ 08753	732-505-4182	732-349-0210

Deliveries to Riverfront State Prison must be made between 8:30 A.M. and 11:30 A.M. Custodial requirements demand adherence to this schedule. The receiving bay can only accommodate vehicles up to 13 feet high. Nothing above that height shall be accepted at Riverfront State Prison.

Deliveries to South Woods State Prison must be made between 7:30 A.M. and 12:30 P.M. Custodial requirements demand adherence to this schedule.

Deliveries to Atlantic Youth Center are available on Friday from 5 AM until 8 PM through the loading dock.

Deliveries to Life Skills & Leadership Academy require 24 hour notification and are available weekdays.

Deliveries to Pinelands Residential Community Home require 24 – 48 hour notification and are available Monday, Thursday and Friday between 7 AM – 3:30 PM through the back porch door or dock.

3.13 TRANSPORTATION EQUIPMENT REQUIREMENTS

Product temperature must be maintained in accordance with the current Food and Drug Administration (FDA) Food Code during all stages of processing and storage. Shipments shall be made in mechanically refrigerated trucks with the freezer operating and the interior of the refrigeration unit not to exceed the temperature specified for the item(s) as denoted in the

subsequent paragraph. Contractor will assure that all products are processed, packaged and stored in refrigerated areas that are sufficient to maintain product quality/excellence until delivery of product to the using agency.

The contractor will be responsible for delivering **frozen products**. Frozen deliverables shall not exceed an internal temperature of **0°F** [truck temperature for frozen items is not to exceed: **-10°F** in the cargo hold of mechanically refrigerated truck transporting/delivering these items]. Products exceeding 0° at time of delivery will not be acceptable. The finding of any evidence of deterioration due to mishandling, thawing and refreezing, or freezer burn will not be acceptable.

Furthermore, the cargo section of the delivery vehicle must be totally free of garbage, refuse, trash and other cargo matter that may be involved in the development of pathogenic or toxigenic micro organisms that could possibly cause undesirable deterioration of the product. The cargo section of all delivery vehicles must be free of all obnoxious odors that may migrate into the product or the product packaging rendering the product unpalatable and un-saleable. Presence of any of these conditions will be cause for complete rejection of the delivery at the expense of the vendor.

3.14 PROOF OF DELIVERY/PACKING SLIPS

The Contractor is required to obtain proof of delivery signed by an authorized employee of the each of the receiving units, when the contractor delivers to that receiving unit. All shipments must be accompanied by a packing slip indicating name of contractor, Agency purchase order number, State Contract number, contents and quantity. Net weight of product shall be reflected on invoice/packing slip. Net price of product of product shall be denoted on invoice.

3.15 SECOND-HALF OF FIRST-YEAR (YEAR-ONE) CONTRACT PRICING

The State will permit contractor(s) to submit revised net pricing, which will be reviewed by the State for applicability for the second-half of the first-year of the contract period. The revised pricing for each contract line awarded, Price Lines 00002, 00004, 00006 and Price List items for Price Lines 00001, 00003, and 00005 must be received by the Purchase Bureau no later than four calendar months after the start date of the initial contract, for consideration. Price List items shall be provided in the same format as the bid submission Price List(s) (please refer to Section 4.4.1.1 of the RFP). Net unit pricing for Price Lines 00001, 00003 and 00005 for the 4-ounce cup varieties shall be submitted on the attached form: Appendix 3.15.

Revised net pricing submissions shall be provided to the Purchase Bureau by facsimile to 609-292-1114 or by mail up until 2:00 PM (Daylight Savings Time) on the fourth month anniversary day. All submissions received by fax or mail after 2:00 p.m. (Daylight Savings Time) this fourth month anniversary date will not be accepted. (For example, if the start date of the term contract is November 1, 2007, then the fourth month anniversary shall be March 1, 2008.) Failure to submit revised net pricing within this set time frame shall constitute the bidder offering and accepting and continuing the net pricing from their contract for the first-half of year-one (the original contracted pricing).

Until authorized by the State of New Jersey, the contractor must continue to accept orders for the second half of year one of the contract based on the manufacturer's pricing for the first half of year one of the contract. Every attempt will be made to review the second half of year-one revised pricing in a timely manner. The State will not permit retro-active increases.

Net pricing that reflect price increases above the US Government reported Producer Price Index- for "Ice Cream and Frozen Dessert Manufacturing -pcu31152-31152", with the base being

November 2007 shall not be authorized. *(Should there be a delay in the initial Contract schedule, please note that the base is relative to the anniversary date of initial contract. For example, the base of November 2007 (used to calculate the submission due no later than March 1, 2008) is for May 1, 2008 approval, when the start of the initial contract is November 1, 2007 conversely, the base of December 2007 (used to calculate the submission due no later than April 1, 2008) is for June 1, 2008 approval, when the start of the initial contract is December 1, 2007).* The current access to this PPI information is described in Section 2.2 of the RFP.

Revised pricing shall not exceed the calculated four-month percent change (unadjusted-first published); the base month is November 2007 *(relative to the anniversary date of the initial contract as explained above).*

Approved second-half of first-year net pricing will take effect for orders placed on or after the Six-month anniversary date of the initial contract, whichever is later.

NOTE: The calculations of price adjustments shall always use the latest version of the PPI data published as of the date specified for such calculations. If the PPI data for the most recent month is not available, the PPI data for the immediately preceding month, or whichever is the most recent month that has published data, shall be used for the basis for adjustment calculations.

3.16 FIRST-HALF OF SECOND-YEAR (YEAR-TWO) CONTRACT PRICING

The State will permit contractor(s) to submit revised net pricing, which will be reviewed by the State for applicability for the first-half of the second-year of the contract period. The revised pricing for each contract line awarded, Price Lines 00002, 00004, and 00006 and Price List items for Price Lines 00001, 00003, 00005 must be received by the Purchase Bureau no later than ten calendar months after the start date of the initial contract, for consideration. Price List items shall be provided in the same format as the bid submission Price List(s) (please refer to Section 4.4.1.1 of the RFP). Net unit pricing for Price Lines 00001, 00003 and 00005 for the 4-ounce cup varieties shall be submitted on the attached form: Appendix 3.16.

Revised net pricing submissions shall be provided to the Purchase Bureau by facsimile to 609-292-1114 or by mail up until 2:00 PM (Daylight Savings Time) on the tenth month anniversary day. All submissions received by fax or mail after 2:00 p.m. (Daylight Savings Time) this tenth month anniversary date will not be accepted. (For example, if the start date of the term contract is November 1, 2007, then the tenth month anniversary shall be September 1, 2008.) Failure to submit revised net pricing within this set time frame shall constitute the bidder offering and accepting and continuing the net pricing from their contract for the second-half of year-one.

Until authorized by the State of New Jersey, the contractor must continue to accept orders for the first-half of year-two of the contract based on the manufacturer's pricing for the second-half of year-one of the contract. Every attempt will be made to review the first-half of year-two revised pricing in a timely manner. The State will not permit retro-active increases.

Net pricing that reflect price increases above the US Government reported Producer Price Index-for "Ice Cream and Frozen Dessert Manufacturing -pcu31152-31152", with the base being July 2008 shall not be authorized. *(Should there be a delay in the initial Contract schedule, please note that the base is relative to the anniversary date of the initial contract and therefore, the second-half of year-one "pricing review" timeline. For example, the base of July 2008 (used to calculate the "pricing review" submission due no later than September 1, 2008) is for November 1, 2008 approval (the anticipated One Year anniversary), when the start of the initial contract is November 1, 2007. Conversely, the base of December 2007 (used to calculate the "pricing review" submission due no later than October 1, 2008) is for December 1, 2008 approval*

(alternate One Year anniversary date), when the start of the initial contract is December 1, 2007). The current access to this PPI information is described in Section 2.2 of the RFP.

Revised pricing shall not exceed the calculated six-month percent change since the second-half of year-one price, (unadjusted-first published); the base month is July 2008 *(relative to the anniversary date of the initial contract and the second-half of year-one revised "pricing review" timeline as explained above).*

Approved first-half of second-year net pricing will take effect for orders placed on or after the One Year anniversary date of the initial contract, whichever is later.

NOTE: The calculations of price adjustments shall always use the latest version of the PPI data published as of the date specified for such calculations. If the PPI data for the most recent month is not available, the PPI data for the immediately preceding month, or whichever is the most recent month that has published data, shall be used for the basis for adjustment calculations.

3.17 SECOND-HALF OF SECOND-YEAR (YEAR-TWO) CONTRACT PRICING

The State will permit contractor(s) to submit revised net unit pricing, which will be reviewed by the State for applicability for the second-half of the second-year of the contract period. The revised pricing for each contract line awarded, Price Lines 00002, 00004, 00006 and Price List items for Price Lines 00001, 00003, and 00005 must be received by the Purchase Bureau no later than four calendar months after the One Year anniversary date of the initial contract, for consideration. Price List items shall be provided in the same format as the bid submission Price List(s) (please refer to Section 4.4.1.1 of the RFP). Net unit pricing for Price Lines 00001, 00003 and 00005 for the 4-ounce cup varieties shall be submitted on the attached form: Appendix 3.17.

Revised net pricing submissions shall be provided to the Purchase Bureau by facsimile to 609-292-1114 or by mail up until 2:00 PM (Daylight Savings Time) on the fourth month after the One Year anniversary date of contract start (a.k.a., sixteenth-month anniversary date). All submissions received by fax or mail after 2:00 p.m. (Daylight Savings Time) this fourth month after the One Year anniversary date of contract start (a.k.a., sixteenth-month anniversary date), will not be accepted. (For example, if the start date of the term contract is November 1, 2007, then the fourth month after the One Year anniversary shall be March 1, 2009.) Failure to submit revised net pricing within this set time frame shall constitute the bidder offering and accepting and continuing the net pricing from their contract for the first-half of year-two.

Until authorized by the State of New Jersey, the contractor must continue to accept orders for the second-half of year two of the contract based on the manufacturer's pricing for the first-half of year-two of the contract. Every attempt will be made to review the second half of year-two revised pricing in a timely manner. The State will not permit retro-active increases.

Net pricing that reflect price increases above the US Government reported Producer Price Index-for "Ice Cream and Frozen Dessert Manufacturing -pcu31152-31152", with the base being November 2008 shall not be authorized. *(Should there be a delay in the initial Contract schedule, please note that the base is relative to the anniversary date of initial contract. For example, the base of November 2008 (used to calculate the submission due no later than March 1, 2009) is for May 1, 2009 approval, when the start of the initial contract is November 1, 2008. Conversely, the base of December 2008 (used to calculate the submission due no later than April 1, 2009) is for June 1, 2009 approval, when the start of the initial contract is December 1, 2008).* The current access to this PPI information is described in Section 2.2 of the RFP.

Revised pricing shall not exceed the calculated six-month percent change since the first-half of year-two price (unadjusted-first published); the base month is November 2008 *(relative to the*

anniversary date of the initial contract and the first-half of year-two revised “pricing review” timeline as explained above).

Approved second-half of second-year net pricing will take effect for orders placed on or after the Eighteen-month anniversary date of the initial contract, whichever is later.

NOTE: The calculations of price adjustments shall always use the latest version of the PPI data published as of the date specified for such calculations. If the PPI data for the most recent month is not available, the PPI data for the immediately preceding month, or whichever is the most recent month that has published data, shall be used for the basis for adjustment calculations.

3.18 “PRICING REVIEW” SUBMISSION SUMMARY

Contract begins	PPI Base Month	RFP Contract Pricing	Received by State no later than 2:00 P.M. EST	Approved Revised Price effective, on or after
11/01/2007	11/2007	Section 3.15 2 nd Half , Yr 1	March 1, 2008	May 1, 2008
	05/2008	Section 3.16 1 st Half, Yr 2	September 1, 2008	November 1, 2008
	11/2008	Section 3.17 2 nd Half, Yr 2	March 1, 2009	May 1, 2009
If contract award is delayed until late November and starts December 1, 2007:				
12/01/2007 (alt. start)	12/2007	Section 3.15 2 nd Half , Yr 1	April 1, 2008	June 1, 2008
	06/2008	Section 3.16 1 st Half, Yr 2	October 1, 2008	December 1, 2008
	12/2008	Section 3.17 2 nd Half, Yr 2	April 1, 2009	June 1, 2009

3.18.1 CALCULATION EXAMPLES FOR PRICING REVIEW & ADJUSTMENT REQUESTS

FOR EXAMPLE (a novelty item):

Most recent index measurement at time of calculation <i>(divided by index at time base price was set)</i>	108.8 (P)
PPI Base Month <i>(equals)</i>	107.6
Difference/increase in PPI measurement (2 decimals) <i>(multiply by)</i>	001.01
The Original Base Price/(Original price submitted) <i>(equals)</i>	\$5.56 per case of 24
Adjusted price <u>maximum</u> to be submitted for review (to the Purchase Bureau for approval).	\$5.6156 per case of 24

3.18.2 CALCULATIONS & ADJUSTMENT REQUESTS FOR CONTRACT EXTENSIONS

This same methodology will be applied to any extension of the contracts. Should the Contractor agree to an extension of the original contract term, the Contractor may provide their revised net pricing submission to the Purchase Bureau. The submission shall be provided by facsimile to 609-292-1114 or by mail up until 2:00 PM (Daylight Savings Time) on the twenty-second month

anniversary date† of the contract's initialization. Approved pricing revisions shall begin on or after the twenty-fourth month anniversary date (of the start of contract), which should fall approximately two months after the contractor submits their pricing revision, († this pricing revision process is available to the Contractor for each six-month term of any contract extension, as long as the Contractor submits the proposed pricing revisions within the regularly spaced timeline as exemplified in Section 3.15 through 3.18.2 of this RFP.)

3.19 METHOD OF BILLING AND PAYMENT

Vendor(s) will receive purchase orders generated from the using/ordering agency(ies) and submit invoices for payment to the using/ordering agency(ies) reflecting clearly and specifically only those items which that individual agency has ordered under the awarded contract. Non-contractual items shall not be co-mingled on the invoice or purchase order.

4.0 BID PROPOSAL PREPARATION AND SUBMISSION

4.1 GENERAL

The bidder is advised to thoroughly read and follow all instructions contained in this RFP, including the instructions on the RFP's signatory page, in preparing and submitting its bid proposal.

Note: Bid proposals shall not contain URLs (Uniform Resource Locators, i.e., the global address of documents and other resources on the world wide web) or web addresses. Inasmuch as the web contains dynamically changing content, inclusion of a URL or web address in a bid response is indicative of potentially changing information. Inclusion of a URL or web address in a bid response implies that the bid's content changes as the referenced web pages change.

4.2 BID PROPOSAL DELIVERY AND IDENTIFICATION

In order to be considered, a bid proposal must arrive at the Purchase Bureau in accordance with the instructions on the RFP signatory page <http://www.state.nj.us/treasury/purchase/bid/summary/08x39553.shtml>. Bidders are cautioned to allow adequate delivery time to ensure timely delivery of bid proposals. **State regulation mandates that late bid proposals are ineligible for consideration. THE EXTERIOR OF ALL BID PROPOSAL PACKAGES ARE TO BE LABELED WITH THE BID IDENTIFICATION NUMBER AND THE FINAL BID OPENING DATE OR RISK NOT BEING RECEIVED IN TIME.**

4.3 NUMBER OF BID PROPOSAL COPIES

The bidder must submit one **(1) complete ORIGINAL bid proposal**, clearly marked as the "ORIGINAL" bid proposal. The bidder should submit **[1] full, complete, and exact copy** of the original proposal.

In addition, the bidder is encouraged to submit **one full, complete, and exact ELECTRONIC copy** of the Brand Price Sheet(s) in PDF file format to be viewable and "read only" by State evaluators using Adobe Acrobat Reader software on compact disc (CD).

However, **the preprinted hard copy paper price list must be included** with the bid proposal.

****NOTE: The State will upload the CD price list(s) to the internet at <http://www.nj.gov/treasury/purchase/noa/contracts/t0024.shtml>

in order to facilitate the Using Agency(ies) ordering from the contract. If the CD is uploaded, the contractor will NOT have to provide (each of) the Using Agency(ies) with a hard copy of the preprinted price list(s).

A bidder failing to provide the requested number of copies will be charged the cost incurred by the State in producing the requested number of copies. It is suggested that the bidder make and retain a copy of its bid proposal.

4.4 BID PROPOSAL CONTENT

4.4.1 FORMS THAT MUST BE SUBMITTED WITH BID PROPOSAL

4.4.1.1 SIGNATORY PAGE

The bidder shall complete and submit the Signatory page provided on the Advertised Solicitation, Current Bid Opportunities webpage <http://www.state.nj.us/treasury/purchase/bid/summary/08x39553.shtml>. The Signatory page shall be signed by an authorized representative of the bidder. If the bidder is a limited partnership, the Signatory page must be signed by a general partner. If the bidder is a joint venture, the Signatory page must be signed by a principal of each party to the joint venture. Failure to comply will result in rejection of the bid proposal.

4.4.1.2 OWNERSHIP DISCLOSURE FORM

In the event the bidder is a corporation, partnership or sole proprietorship, the bidder must complete the attached Ownership Disclosure Form. A current completed Ownership Disclosure Form must be received prior to or accompany the bid proposal. Failure to do so will preclude the award of a contract.

The Ownership Disclosure Form is located on the Advertised Solicitation, Current Bid Opportunities webpage <http://www.state.nj.us/treasury/purchase/bid/summary/08x39553.shtml>.

4.4.1.3 DISCLOSURE OF INVESTIGATIONS/ACTIONS INVOLVING BIDDER

The bidder shall provide a detailed description of any investigation, litigation, including administrative complaints or other administrative proceedings, involving any public sector clients during the past five years including the nature and status of the investigation, and, for any litigation, the caption of the action, a brief description of the action, the date of inception, current status, and, if applicable, disposition. The bidder shall use the Disclosure of Investigations and Actions Involving Bidder form located on the Advertised Solicitation, Current Bid Opportunities webpage <http://www.state.nj.us/treasury/purchase/bid/summary/08x39553.shtml>.

4.4.2 PROOFS OF REGISTRATION THAT MUST BE SUBMITTED WITH THE BID PROPOSAL

4.4.2.1 BUSINESS REGISTRATION CERTIFICATE FROM THE DIVISION OF REVENUE

FAILURE TO SUBMIT A COPY OF THE BIDDER'S BUSINESS REGISTRATION CERTIFICATE (OR INTERIM REGISTRATION) FROM THE DIVISION OF REVENUE WITH THE BID PROPOSAL MAY BE CAUSE FOR REJECTION OF THE BID PROPOSAL.

The bidder may go to www.nj.gov/nibgs to register with the New Jersey Division of Revenue or to obtain a copy of an existing Business Registration Certificate.

Refer to Section 1.1. of the NJ Standard Terms and Conditions version 05 09 06 located on the Advertised Solicitation, Current Bid Opportunities webpage
<http://www.state.nj.us/treasury/purchase/bid/summary/08x39553.shtml>.

4.4.3 FORMS THAT MUST BE SUBMITTED BEFORE CONTRACT AWARD AND SHOULD BE SUBMITTED WITH THE BID PROPOSAL.

4.4.3.1 MACBRIDE PRINCIPLES CERTIFICATION

The bidder is required to complete the attached MacBride Principles Certification evidencing compliance with the MacBride Principles. The requirement is a precondition to entering into a State contract. The MacBride Principles Certification Form is located on the Advertised Solicitation, Current Bid Opportunities webpage:

<http://www.state.nj.us/treasury/purchase/bid/summary/08x39553.shtml>.

4.4.3.2 AFFIRMATIVE ACTION

The bidder is required to submit a copy of Certificate of Employee Information or a copy of Federal Letter of Approval verifying that the bidder is operating under a federally approved or sanctioned Affirmative Action program. If the bidder has neither document of Affirmative Action evidence, then the bidder must complete the attached Affirmative Action Employee Information Report (AA-302). This requirement is a precondition to entering into a State contract. The Affirmative Action Employee Information Report (AA-302) is located on the Advertised Solicitation, Current Bid Opportunities webpage:

<http://www.state.nj.us/treasury/purchase/bid/summary/08x39553.shtml>.

4.4.4 SUBMITTALS

A) The bidder must submit a current price list for various available ice cream, frozen yogurt, ices, and sherbet products (including sugar free, low fat, etc.) for price lines 00002, 00004 and 00006 in the manner set forth in Section 4.4.4 C (below) of this RFP. Failure to so will result in the rejection of its bid proposal for the affected price line items.

B) In addition to the above requirements, the bidder is encouraged to submit its price list(s) in PDF or text format on a CD, as noted in Section 4.3 of this RFP, to be uploaded to the internet for use by the Using Agencies. However, the preprinted hard copy (paper) price list must be included with the bid proposal. The price list must include the information as set forth in Section 4.4.4 C illustrated below:

C) Price List Illustration:

COMPANY XYZ LETTERHEAD with	
Company Name	RFP 08-X-39553
Company Address	
Company Phone Number	Date Submitted: 00/00/00
Company Fax Number	

PRODUCT	QUANTITY/UNIT	UNIT WEIGHT	NET PRICE
Chocolate Chip Round w/ van ice cream	24 ct/case	96 ozs.	\$21.73
Fudge Ice on a Stick	24 ct/case	48 ozs.	\$8.9844
Prem. Vanilla Ice Cream (12% butterfat)	62 serv/3 gallon	242 ozs/ 15lbs 4ozs	\$22.00
Sherbet -Pints	8 pints/cs	128 fl ozs	\$7.12

Soft Serve 5%	768 serv/4 gal	42 lbs (87 g/serv)	\$25.85
Orange n Cream on a stick	36 ct/case	72 ozs	\$6.80

D) Nutritional information, ingredients, allergen statements, product weights must be submitted and are necessary to compare products. These items may be used food service personnel and dieticians to balance their nutritional programs.

4.4.4.1 BIDDER EXPERIENCE - DATA SHEETS

The bidder must provide all of the information requested in the Bidder’s Data Packet located on the Advertised Solicitation, Current Bid Opportunities webpage:
<http://www.state.nj.us/treasury/purchase/bid/summary/08x39553.shtml>.

4.4.4.2 SAMPLES/SAMPLE TESTING

Products offered must be in accordance with this RFP. The samples submitted must meet the specification requirements set forth in the RFP and must be representative of the product bid. Bid samples for pricing lines 00001 to 00006 inclusive for evaluation and testing purposes are to be made available at no charge and delivered to the State, at the bidder's expense. The bidder must, within 5 working days following a request from the State, submit bid samples to the State. Bid samples will not be returned. The State may conduct laboratory and tests to assure that the bid samples submitted for pricing lines 00001 to 00006 inclusive conform to this RFP. The State reserves the right to perform any tests necessary to assure that the bid samples conform to this RFP for pricing lines 00001 to 00006 inclusive. The testing results of the State are final.

4.4.5 FINANCIAL CAPABILITY OF THE BIDDER

Upon request, in order to provide the State with the ability to judge the bidder’s financial capacity and capabilities to undertake and successfully complete the contract, the bidder should submit two years of certified financial statements that include a balance sheet, income statement and statement of cash flow, and all applicable notes for the most recent calendar year or the bidder’s most recent fiscal year. If certified financial statements are not available, the bidder should provide either a reviewed or compiled statement from an independent accountant setting forth the same information required for the certified financial statements, together with a certification from the Chief Executive Officer and the Chief Financial Officer, that the financial statements and other information included in the statements fairly present in all material respects the financial condition, results of operations and cash flows of the bidder as of, and for, the periods presented in the statements. In addition, the bidder should submit a bank reference.

If the information is not supplied with the bid proposal, the State may still require the bidder to submit it. If the bidder fails to comply with the request within seven (7) business days, the State may deem the proposal non-responsive.

The bidder may designate specific financial information as not subject to disclosure when the bidder has a good faith legal/factual basis for such assertion. The bidder may submit specific financial documents in a separate, sealed package clearly marked “Confidential-Financial Information” along with its Bid Proposal.

The State reserves the right to make the determination whether to accept the bidder’s assertion of confidentiality and will advise the bidder accordingly.

4.4.6 PRICING

The bidder must submit its pricing using the format set forth in the State supplied price sheet(s) attached to this RFP and on a Price List designed in the table format as illustrated in Section 4.4.4 of this RFP. The bidder is required to attach to the price list of [all of] the Brand information requested in Section 3.2 and Section 4.4.4 above of this RFP. Failure to submit all information required will result in the bid being considered non-responsive.

Each bidder is required to hold its prices firm for a period of **60** days. Every effort will be made to award the contract prior to the time period set forth above. However, upon the Director's request and by mutual consent, the State and the lowest first responsible Bidder and/or second lowest responsible Bidder and/or third lowest responsible Bidder may agree to extend the time the State may make an award.

4.4.7 COOPERATIVE PURCHASING

The bidder should complete the attached Cooperative Purchasing Form indicating willingness or unwillingness to extend State contract pricing and terms to Cooperative Purchasing partners

4.4.8 METHOD OF BIDDING AND PRICE SHEET INSTRUCTIONS

For line items 00001, 00003, 00005, the bidder shall provide a firm, fixed unit price per each 4-ounce cup of the products noted.

For the NET **Price List** line items (0002, 0004, 0006) The bidder shall provide a firm fixed price per case or bulk container (i.e. 3 gallon tub) on an attached Price List **AND must hand write or type the word <<"NET">> on the price line provided for each of the price lines,** they are offering bids (Price Lines 0002, 0004, 0006). In addition, the bidder is provided an area under the commodity description for the Net Price List items (Price Lines 00002, 00004 and 00006) to place delivery minimums (minimums shall not exceed \$150 aggregated per delivery).

In addition, pricing shall not exceed four decimal places to the right of the decimal point. **The four decimal place limitation** is consistent with the requirements of the electronic record-keeping process pre-established by the Treasury Department, State of New Jersey. [For example a price of \$0.2512 is acceptable, yet a price of \$0.25121 is not permissible for calculation (and thus shall not be used for the initial pricing or any revised pricing submitted that has been tied to the PPI index) as illustrated in Section 3.15 through Section 3.18 of this RFP.]]

5.0 SPECIAL CONTRACTUAL TERMS AND CONDITIONS

5.1 PRECEDENCE OF SPECIAL CONTRACTUAL TERMS AND CONDITIONS

The contract awarded as a result of this RFP shall consist of this RFP, addendum to this RFP, the contractor's bid proposal and the Division's Notice of Award.

Unless specifically stated within this RFP, the Special Contractual Terms and Conditions of the RFP take precedence over the NJ Standard Terms and Conditions version 05 09 06 located on the Advertised Solicitation, Current Bid Opportunities webpage:
<http://www.state.nj.us/treasury/purchase/bid/summary/08x39553.shtml>.

In the event of a conflict between the provisions of this RFP, including the Special Contractual Terms and the NJ Standard Terms and Conditions version 05 09 06, and any Addendum to this RFP, the Addendum shall govern.

In the event of a conflict between the provisions of this RFP, including any Addendum to this RFP, and the bidder's bid proposal, the RFP and/or the Addendum shall govern.

5.2 CONTRACT TERM AND EXTENSION OPTION

The term of the contract shall be for a period of **Two (2) Years**. The anticipated "Contract Effective Date" is provided on the signatory page of this RFP: <http://www.state.nj.us/treasury/purchase/bid/summary/08x39553.shtml>.

If delays in the procurement process result in a change to the anticipated Contract Effective Date, the bidder agrees to accept a contract for the full term of the contract. The contract may be extended for all or part of one (1) one-year period, by the mutual written consent of the contractor and the Director. **Purchase orders may be placed against the contract up to and including the end of business on the last day of the contract, for delivery no more than 45 days after contract expiration.**

5.3 CONTRACT TRANSITION

In the event that a new contract has not been awarded prior to the contract expiration date, as may be extended herein, it shall be incumbent upon the contractor to continue the contract under the same terms and conditions until a new contract can be completely operational. At no time shall this transition period extend more than **45** days beyond the expiration date of the contract.

5.4 CONTRACT AMENDMENT

Any changes or modifications to the terms of the contract shall be valid only when they have been reduced to writing and signed by the contractor and the Director.

5.5 CONTRACTOR'S WARRANTY

- a) The Contractor is responsible for the quality, technical accuracy, timely completion and delivery of all deliverables and other services to be furnished by the Contractor under the Contract. The Contractor agrees to perform in a good, skillful and timely manner all services set forth in the Contract.
- b) The Contractor shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in its services and deliverables furnished under the Contract. The approval of interim deliverables furnished under the Contract shall not in any way relieve the Contractor of fulfilling all of its obligations under the Contract. The acceptance or payment for any of the services rendered under the Contract shall not be construed as a waiver by the State or Agency, of any rights under the agreement or of any cause of action arising out of the Contractor's performance of the Contract.
- c) The acceptance of, approval of or payment for any of the services performed by the Contractor under the Contract shall not constitute a release or waiver of any claim the State or Agency, has or may have for latent defects or errors or other breaches of warranty or negligence.

5.6 ITEMS ORDERED AND DELIVERED

The Using Agencies are authorized to order and the contractors are authorized to ship only those items covered by the contracts resulting from this RFP. If a review of orders placed by the Using Agency [Agencies] reveals [reveal] that material other than that covered by the contract has been ordered and delivered, such delivery shall be a violation of the terms of the contract and may be considered by the Director as a basis to terminate the contract and/or as a basis not to award the contractor a subsequent contract. The Director may take such steps as are necessary to have the items returned by the Agency, regardless of the time between the date of

delivery and discovery of the violation. In such event, the contractor shall reimburse the State the full purchase price.

The contract involves items which are necessary for the continuation of ongoing critical State services. Any delay in delivery of these items would disrupt State services and would force the State to immediately seek alternative sources of supply on an emergency basis. Timely delivery is critical to meeting the State's ongoing needs.

5.7 REMEDIES FOR FAILURE TO COMPLY WITH MATERIAL CONTRACT REQUIREMENTS

In the event that the contractor fails to comply with any material contract requirements, the Director may take steps to terminate the contract in accordance with the State administrative code and/or authorize the delivery of contract items by any available means, with the difference between the price paid and the defaulting contractor's price either being deducted from any monies due the defaulting contractor or being an obligation owed the State by the defaulting contractor.

5.8 MANUFACTURING/PACKAGING REQUIREMENTS

5.8.1 All products must conform in every respect to the standards and regulations established by Federal and New Jersey State laws.

5.8.2 All products shall be manufactured and packaged under modern sanitary conditions in accordance with federal and state law and standard industry practice.

5.8.3 All products are to be packaged in sizes as specified in this RFP and shall be packaged in such a manner as to ensure delivery in first class condition and properly marked for identification. All shipments must be comprised of original cartons associated with the commercial industry represented by the actual product contained within each carton. Deliveries containing re-used, re-labeled, re-worked or alternate cartons are subject to rejection by the Using Agency at the contractor's expense.

5.9 CLAIMS

All claims asserted against the State by the contractor shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1.1, et seq., and/or the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq.

5.10 CONTRACT ACTIVITY REPORT

In conjunction with the standard record keeping requirements of this contract, as required by in paragraph 3.19 of the NJ Standard Terms and Conditions version 05 09 06, located on the Advertised Solicitation, Current Bid Opportunities webpage <http://www.state.nj.us/treasury/purchase/bid/summary/08x39553.shtml>, contractor(s) must provide, on a calendar quarter basis, to the Purchase Bureau buyer assigned, a record of all purchases made under their contract award resulting for this Request for Proposal. This includes purchases made by all using agencies including the State and political sub-divisions thereof. This reporting requirement includes sales to State using agencies and, if permitted under the terms of the contract, sales to counties, municipalities, school districts, volunteer fire departments, first aid squads and rescue squads, and independent institutions of higher education. The requirement also includes sales to State and County Colleges and Quasi-State Agencies. Quasi-State Agencies include any agency, commission, board, authority or other such governmental entity which is established and is allocated to a State department or any bi-state governmental entity of which the State of New Jersey is a member.

This information must be provided in a tabular format such that an analysis can be made to determine the following:

- Contractor's total sales volume to each purchaser under the contract, subtotaled by product, including, if applicable, catalog number and description, price list with appropriate page reference and/or contract discount applied.
- Total dollars paid to subcontractors.

Submission of purchase orders, confirmations, and/or invoices do not fulfill this contract requirement for information.

Contractors are strongly encouraged to submit the required information in electronic spreadsheet format. The Purchase Bureau uses Microsoft Excel.

Failure to report this mandated information will be a factor in future award decisions.

6.0 PROPOSAL EVALUATION

6.1 EVALUATION CRITERIA

The following criteria will be used to evaluate all bid proposals that meet the requirements of this RFP. The criteria are not necessarily listed in order of importance:

6.1.1 Price

Line items 1, 3, 5 and 7 will be evaluated based on the cost per unit (each).

6.1.1.1

Line items 2, 4 & 6, that require a current price list for various available Ice Cream/Frozen Novelties products, will be evaluated by random price comparisons of like items. The State seeks a variety of, at minimum; twelve frozen novelty varieties (i.e. bulk ice cream, ice pops, chocolate-covered ice cream on-a-stick, ice cream sundae on a cone, ice cream sandwiches, etc). The price of randomly selected items will be added together and averaged.

6.1.1.2

Furthermore, where portion/container size varies slightly, the State may use the cost per fluid ounce and/or weight of the products to compare and analyze prices per like item submissions and to determine the award of contract.

6.1.2

Experience of the bidder

6.1.3

The bidder's past performance under similar contracts, including if applicable, the Division's vendor performance database.

6.1.4

The minimum dollar amount aggregated required by the bidder for delivery to the Using Agencies.

6.2 ORAL PRESENTATION AND/OR CLARIFICATION OF BID PROPOSAL

After the submission of bid proposals, unless requested by the State as noted below, vendor contact with the State is still not permitted.

The bidder may be required to give an oral presentation to the State concerning its bid proposal. The State may also require the bidder to submit written responses to questions regarding its bid proposal.

The purpose of such communication with the bidder, either through an oral presentation or a letter of clarification, is to provide an opportunity for the bidder to clarify or elaborate on its bid proposal. Original bid proposals submitted, however, cannot be supplemented, changed, or corrected in any way. No comments regarding other bid proposals are permitted. Bidders may not attend presentations made by their competitors.

It is within the State's discretion whether to require the bidder to give an oral presentation or require the bidder to submit written responses to questions regarding its bid proposal. Action by the State in this regard should not be construed to imply acceptance or rejection of a bid proposal. The Purchase Bureau buyer will be the sole point of contact regarding any request for an oral presentation or clarification.

6.3 BID DISCREPANCIES

In evaluating bids:

- Discrepancies between words and figures will be resolved in favor of words.
- Discrepancies between unit prices and totals of unit prices will be resolved in favor of unit prices.
- Discrepancies in the multiplication of units of work and unit prices will be resolved in favor of the unit prices.
- Discrepancies between the indicated total of multiplied unit prices and units of work and the actual total will be resolved in favor of the actual total.
- Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the corrected sum of the column of figures.

7.0 CONTRACT AWARD

7.1 DOCUMENTS REQUIRED BEFORE CONTRACT AWARD

7.1.1 REQUIREMENTS OF N.J.S.A. 19:44A-20.13-25 (FORMERLY EXECUTIVE ORDER 134)

In order to safeguard the integrity of State government procurement by imposing restrictions to insulate the negotiation and award of State contracts from political contributions that pose the risk of improper influence, purchase of access, or the appearance thereof, the Legislature enacted N.J.S.A. 19:44A-20.13 – 25 on March 22, 2005 (the "Legislation"), retroactive to October 15, 2004, superseding the terms of Executive Order 134. Pursuant to the requirements of the Legislation, the terms and conditions set forth in this section are material terms of any contract resulting from this RFP:

7.1.1.1 DEFINITIONS

For the purpose of this section, the following shall be defined as follows:

a) Contribution – means a contribution reportable as a recipient under "The New Jersey Campaign Contributions and Expenditures Reporting Act." P.L. 1973, c. 83 (C.19:44A-1 et seq.), and implementing regulations set forth at N.J.A.C. 19:25-7 and N.J.A.C. 19:25-10.1 et seq. Through December 31, 2004, contributions in excess of \$400 during a reporting period were

deemed "reportable" under these laws. As of January 1, 2005, that threshold was reduced to contributions in excess of \$300.

b) Business Entity – means any natural or legal person, business corporation, professional services corporation, Limited Liability Company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of New Jersey or any other state or foreign jurisdiction. The definition of a business entity includes (i)all principals who own or control more than 10 percent of the profits or assets of a business entity or 10 percent of the stock in the case of a business entity that is a corporation for profit, as appropriate; (ii)any subsidiaries directly or indirectly controlled by the business entity; (iii)any political organization organized under section 527 of the Internal Revenue Code that is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee; and (iv)if a business entity is a natural person, that person's spouse or child, residing in the same household.

7.1.1.2 BREACH OF TERMS OF THE LEGISLATION

It shall be a breach of the terms of the contract for the Business Entity to (i)make or solicit a contribution in violation of the Legislation, (ii)knowingly conceal or misrepresent a contribution given or received; (iii)make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution; (iv)make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate of holder of the public office of Governor, or to any State or county party committee; (v)engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of the Legislation; (vi)fund contributions made by third parties, including consultants, attorneys, family members, and employees; (vii)engage in any exchange of contributions to circumvent the intent of the Legislation; or (viii)directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Legislation.

7.1.1.3 CERTIFICATION AND DISCLOSURE REQUIREMENTS

a) The State shall not enter into a contract to procure from any Business Entity services or any material, supplies or equipment, or to acquire, sell or lease any land or building, where the value of the transaction exceeds \$17,500, if that Business Entity has solicited or made any contribution of money, or pledge of contribution, including in-kind contributions to a candidate committee and/or election fund of any candidate for or holder of the public office of Governor, or to any State or county political party committee during certain specified time periods

b) Prior to awarding any contract or agreement to any Business Entity, the Business Entity proposed as the intended awardee of the contract shall submit the Certification and Disclosure form, certifying that no contributions prohibited by the Legislation have been made by the Business Entity and reporting all contributions the Business Entity made during the preceding four years to any political organization organized under 26 U.S.C.527 of the Internal Revenue Code that also meets the definition of a "continuing political committee" within the mean of N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.7. The required form and instructions, available for review on the Purchase Bureau website at <http://www.state.nj.us/treasury/purchase/forms.htm#eo134>, shall be provided to the intended awardee for completion and submission to the Purchase Bureau with the Notice of Intent to Award. Upon receipt of a Notice of Intent to Award a Contract, the intended awardee shall submit to the Division, in care of the Purchase Bureau Buyer, the Certification and Disclosure(s) within five (5) business days of the State's request. Failure to submit the required forms will preclude award of a contract under this RFP, as well as future contract opportunities.

c) Further, the Contractor is required, on a continuing basis, to report any contributions it makes during the term of the contract, and any extension(s) thereof, at the time any such contribution is made. The required form and instructions, available for review on the Purchase Bureau website at <http://www.state.nj.us/treasury/purchase/forms.htm#eo134>, shall be provided to the intended awardee with the Notice of Intent to Award.

7.1.1.4 STATE TREASURER REVIEW

The State Treasurer or his designee shall review the Disclosures submitted pursuant to this section, as well as any other pertinent information concerning the contributions or reports thereof by the intended awardee, prior to award, or during the term of the contract, by the contractor. If the State Treasurer determines that any contribution or action by the contractor constitutes a breach of contract that poses a conflict of interest in the awarding of the contract under this solicitation, the State Treasurer shall disqualify the Business Entity from award of such contract.

7.1.1.5 ADDITIONAL DISCLOSURE REQUIREMENT OF P.L. 2005, C. 271

Contractor is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to P.L. 2005, c. 271, section 3 if the contractor receives contracts in excess of \$50,000 from a public entity in a calendar year. It is the contractor's responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at 888-313-3532 or at www.elec.state.nj.us.

7.2 FINAL CONTRACT AWARD

Contract award[s] shall be made on a per line basis, with reasonable promptness by written notice to that responsible bidder(s), whose bid proposal(s), conforming to this RFP, is(are) most advantageous to the State, price, and other factors considered. Any or all bid proposals may be rejected when the State Treasurer or the Director determines that it is in the public interest to do so.

7.3 INSURANCE CERTIFICATES

The contractor shall provide the State with current certificates of insurance for all coverages required by the terms of this contract, naming the State as an Additional Insured.

8.0 CONTRACT ADMINISTRATION

8.1 CONTRACT MANAGER

The State Contract Manager is the State employee responsible for the overall management and administration of the contract.

The State Contract Manager for this project will be identified at the time of execution of contract. At that time, the contractor will be provided with the State Contract Manager's name, department, division, agency, address, telephone number, fax phone number, and email address.

8.1.1 STATE CONTRACT MANAGER RESPONSIBILITIES

For an agency contract where only one State office uses the contract, the State Contract Manager will be responsible for engaging the contractor, assuring that Purchase Orders are issued to the contractor, directing the contractor to perform the work of the contract, approving the deliverables and approving payment vouchers. The State Contract Manager is the person that the contractor will contact **after the contract is executed** for answers to any questions and concerns about any aspect of the contract. The State Contract Manager is responsible for coordinating the use and resolving minor disputes between the contractor and any component part of the State Contract Manager's Department.

If the contract has multiple users, then the State Contract Manager shall be the central coordinator of the use of the contract for all Using Agencies, while other State employees engage and pay the contractor. All persons and agencies that use the contract must notify and coordinate the use of the contract with the State Contract Manager.

8.1.2 COORDINATION WITH THE STATE CONTRACT MANAGER

Any contract user that is unable to resolve disputes with a contractor shall refer those disputes to the State Contract Manager for resolution. Any questions related to performance of the work of the contract by contract users shall be directed to the State Contract Manager. The contractor may contact the State Contract Manager if the contractor can not resolve a dispute with contract users.

Appendix 3.15

Second-Half of First-Year (Year-One) Contract pricing for 08-X-39553

FOODS: Ice Cream & Frozen Novelties-2yr, North Central & South Zones, Statewide

Revised net pricing submissions shall be provided to the Purchase Bureau by facsimile to 609-292-1114 or by mail up until 2:00 PM (Daylight Savings Time) on the fourth month anniversary day. All submissions received by fax or mail after 2:00 p.m. (Daylight Savings Time) this fourth month anniversary date will not be accepted. (For example, if the start date of the term contract is November 1, 2007, then the fourth month anniversary shall be March 1, 2008.) Failure to submit revised net pricing within this set time frame shall constitute the bidder offering and accepting and continuing the net pricing from their contract for the first-half of year-one (the original contracted pricing).

FOR EXAMPLE (4 oz cups):

Most recent index measurement at time of calculation <i>(divided by index at time base price was set)</i>	108.8 (P)
PPI Base Month <i>(equals)</i>	107.6
Difference/increase in PPI measurement (2 decimals) <i>(multiply by)</i>	001.01
The Original Base Price/(Original price submitted) <i>(equals)</i>	\$0.30 each
Adjusted price <u>maximum</u> * to be submitted for review (to the Purchase Bureau for approval). <u>*In dollars and/or cents only- four decimal maximum</u>	\$0.3030 each

**COMPLETE BELOW AND FAX (609) 292-1114 OR MAIL to
State of NJ Treasury, Purchase Bureau, Food & Clothing Unit, 33 West State St.
PO Box 230, Trenton, NJ 08625-0230:**

CONTRACT NUMBER: _____ CONTRACTOR NAME: _____

- i) Most recent index measurement at time of calculation
(divided by index at time base price was set) i) _____
- ii) PPI Base Month
(equals) ii) _____
- iii) Difference/increase in PPI measurement (2 decimals)
(multiply by) iii) _____
- iv) The Original Base Price/(Original price submitted)
(equals) iv) \$ _____
- v) Adjusted price maximum* to be submitted for review
(to the Purchase Bureau for approval). v) \$ _____

***In dollars and cents only**

The price above (v) reflects the revised price I am submitting for approval to the Purchase Bureau:

Name and Title of Representative Submitting Price Revision Request

Date of Submission

Contact Phone Number

Appendix 3.16

First-Half of Second-Year (Year-Two) Contract pricing for 08-X-39553

FOODS: Ice Cream & Frozen Novelties-2yr, North Central & South Zones, Statewide

Revised net pricing submissions shall be provided to the Purchase Bureau by facsimile to 609-292-1114 or by mail up until 2:00 PM (Daylight Savings Time) on the tenth month anniversary day. All submissions received by fax or mail after 2:00 p.m. (Daylight Savings Time) this tenth month anniversary date will not be accepted. (For example, if the start date of the term contract is November 1, 2007, then the tenth month anniversary shall be September 1, 2008.) Failure to submit revised net pricing within this set time frame shall constitute the bidder offering and accepting and continuing the net pricing from their contract for the second-half of year-one.

FOR EXAMPLE (4 oz cups):

Most recent index measurement at time of calculation <i>(divided by index at time base price was set)</i>	108.8 (P)
PPI Base Month <i>(equals)</i>	107.6
Difference/increase in PPI measurement (2 decimals) <i>(multiply by)</i>	001.01
The Original Base Price/(Original price submitted) <i>(equals)</i>	\$0.30 each
Adjusted price <u>maximum</u> * to be submitted for review (to the Purchase Bureau for approval). <u>*In dollars and/or cents only- four decimal maximum</u>	\$0.3030 each

**COMPLETE BELOW AND FAX (609) 292-1114 OR MAIL to
State of NJ Treasury, Purchase Bureau, Food & Clothing Unit, 33 West State St.
PO Box 230, Trenton, NJ 08625-0230:**

CONTRACT NUMBER: _____ CONTRACTOR NAME: _____

- i) Most recent index measurement at time of calculation
(divided by index at time base price was set) i) _____
- ii) PPI Base Month
(equals) ii) _____
- iii) Difference/increase in PPI measurement (2 decimals)
(multiply by) iii) _____
- iv) The Original Base Price/(Original price submitted)
(equals) iv) \$ _____
- v) Adjusted price maximum* to be submitted for review
(to the Purchase Bureau for approval). v) \$ _____

***In dollars and cents only**

The price above (v) reflects the revised price I am submitting for approval to the Purchase Bureau:

Name and Title of Representative Submitting Price Revision Request

Date of Submission

Contact Phone Number

Appendix 3.17

Second-Half of Second-Year (Year-Two) Contract pricing for 08-X-39553

FOODS: Ice Cream & Frozen Novelties-2yr, North Central & South Zones, Statewide

Revised net pricing submissions shall be provided to the Purchase Bureau by facsimile to 609-292-1114 or by mail up until 2:00 PM (Daylight Savings Time) on the fourth month after the One Year anniversary date of contract start (a.k.a., sixteenth-month anniversary date). All submissions received by fax or mail after 2:00 p.m. (Daylight Savings Time) this fourth month after the One Year anniversary date of contract start (a.k.a., sixteenth-month anniversary date), will not be accepted. (For example, if the start date of the term contract is November 1, 2007, then the fourth month after the One Year anniversary shall be March 1, 2009.) Failure to submit revised net pricing within this set time frame shall constitute the bidder offering and accepting and continuing the net pricing from their contract for the first-half of year-two.

FOR EXAMPLE (4 oz cups):

Most recent index measurement at time of calculation <i>(divided by index at time base price was set)</i>	108.8 (P)
PPI Base Month <i>(equals)</i>	107.6
Difference/increase in PPI measurement (2 decimals) <i>(multiply by)</i>	001.01
The Original Base Price/(Original price submitted) <i>(equals)</i>	\$0.30 each
Adjusted price <u>maximum</u> * to be submitted for review (to the Purchase Bureau for approval). <u>*In dollars and/or cents only- four decimal maximum</u>	\$0.3030 each

**COMPLETE BELOW AND FAX (609) 292-1114 OR MAIL to
State of NJ Treasury, Purchase Bureau, Food & Clothing Unit, 33 West State St.
PO Box 230, Trenton, NJ 08625-0230:**

CONTRACT NUMBER: _____ CONTRACTOR NAME: _____

- | | |
|---|-----------------------|
| i) Most recent index measurement at time of calculation
<i>(divided by index at time base price was set)</i> | i) _____ |
| ii) PPI Base Month
<i>(equals)</i> | ii) _____
_____ |
| iii) Difference/increase in PPI measurement (2 decimals)
<i>(multiply by)</i> | iii) _____ |
| iv) The Original Base Price/(Original price submitted)
<i>(equals)</i> | iv) \$ _____
_____ |
| v) Adjusted price <u>maximum</u> * to be submitted for review
(to the Purchase Bureau for approval). | v) \$ _____ |

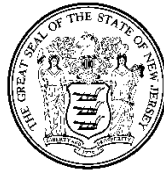
***In dollars and cents only**

The price above (v) reflects the revised price I am submitting for approval to the Purchase Bureau:

Name and Title of Representative Submitting Price Revision Request

Date of Submission

Contact Phone Number



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
PURCHASE BUREAU
P.O. BOX 230
TRENTON, NEW JERSEY 08625-0230

JON S. CORZINE
Governor

BRADLEY I. ABELOW
State Treasurer

September 10, 2007

To: All Interested Bidders

Re: RFP # 08-X-39553
FOODS: Ice Cream & Frozen Novelties- 2Yr
North, Central & South Zones, Statewide

Bid Due Date: September 27, 2007 (2:00 p.m.)

ADDENDUM 01

The following constitutes Addendum #01 to the above referenced solicitation. This addendum is divided into the following parts:

Part 1: Answers to questions.

Part 2: Additions, deletions, clarifications and modifications to the RFP

It is the bidder's responsibility to ensure that all changes are incorporated into the original RFP.

All other instructions, terms and conditions of the RFP shall remain the same.

PART 1

**FOODS: Ice Cream & Frozen Novelties- 2Yr
North, Central & South Zones, Statewide
RFP # 08-X-39553**

Answers to Questions

Note: Some of the questions have been paraphrased in the interest of readability and clarity. Each question is referenced by the appropriate RFP page number(s) and section where applicable.

#	Page #	RFP Section Reference	Question	Answer
1	1-3	<u>Price Sheets</u>	Are all 4 oz cups supposed to be grouped together regardless of salient characteristics (yogurt, ice cream, sherbet, sorbet, sugar free, fat free, no sugar added, ices, etc.)?	YES, All <u>4 oz cups</u> for Price Lines 00001, 00003 and 00005 ARE TO BE GROUPED TOGETHER. The State is requiring one price to be listed for any and all four (4) oz cups of product. During the reprocurement process, prior contract practices and activities are reviewed (for any product, service, price and/or market fluctuation issues that have arisen during the contract term) along with the needs of the State's programs. Hence this RFP reflects corrective actions to past contract service

#	Page #	RFP Section Reference	Question	Answer
	4	<p style="text-align: center;">And</p> <p>Cited from RFP <u>1.2 Background</u></p>		<p>issues, new pricing parameters, and the current needs of the Using Agencies.</p> <p>This is a revised re-procurement of the Ice Cream Northern-Central-South Zone Various Agencies term contract, presently due to expire on October 31, 2007.</p> <p>This RFP has changed considerably since the last time that these items were placed out to bid. Therefore, please thoroughly read the entire RFP including, but not limited to, Section 3.0 in its entirety, the price sheets with the respective commodity code descriptions; Section 2.2 definitions, Section 4.4.4 Price List submittals and Appendices 3.15, 3.16 and 3.17.</p> <p>Notable changes include, but are not limited to:</p> <p>a) Sliced ice-cream pricing shall be submitted as part of the novelty Price List rather than as an independent line item (for a single zone) as was the method of bidding and award for this commodity in the past.</p> <p>b) The four-fluid-ounce cups (118 ml) shall include, the full line of brand offerings, i.e.: sherbets, water ices, ice cream, frozen yogurt varieties (of standard, premium, low-fat, fat-free and/or reduced fat, lite, sugar-free and/or no-sugar-added, and seasonal/new flavor characteristics). Flavors offered shall include the full line of brand offerings.</p> <p>c) Bidder or Contractor shall not limit flavor varieties offered in response to this bid or contract awards and shall not prohibit the purchase of new or seasonal flavors as they are introduced to the market for Price List items and 4-ounce cup varieties.</p> <p>d) Pricing lines and/or net price lists for each line item shall remain constant for each six (calendar) month period within the two-year contract term, and any extension thereof. Revisions to the original proposed net price lists/net pricing are considered, as explained in Section 3.15, Section 3.16 and Section 3.17 of this RFP. Pricing will be reviewed by the Purchase Bureau for adjustment to the bid price, upon the request of the Contractor, at the fourth month anniversary, tenth month anniversary, and every six months thereafter, to determine if a price increase is warranted for the second-half of year-one, the first-half of year-two, etc.</p> <p>e) The contract awards shall be for a period of two years, minimum, rather than 12 months as has been the practice in the previous ice cream/novelty contracts awarded by the State.</p>

**FOODS: Ice Cream & Frozen Novelties- 2Yr
North, Central & South Zones, Statewide
RFP # 08-X-39553**

Additions, Deletions, Clarifications and Modifications to the RFP

#	Page #	RFP Section Reference	Additions, Deletions, Clarifications and Modifications
1		4.4.4 Submittals	<p style="color: red; margin: 0;">Delete, as indicated below:</p> <p>A) The bidder must submit a current price list for various available ice cream, frozen yogurt, ices, and sherbet products (including sugar free, low fat, etc.) for price lines 00002, 00004 and 00006</p> <p style="color: blue; margin: 0;">Add as indicated below:</p> <p>A) The bidder must submit a current price list for various available ice cream, frozen yogurt, ices, sherbet products and assorted novelties other than the four (4) ounce cups (including sugar free, low fat, etc.) for price lines 00002, 00004 and 00006</p>

State of New Jersey Standard Terms and Conditions

Applicable to all advertised DPP Procurements unless otherwise indicated
Rev: 07/27/2007 ST&C

STANDARD TERMS AND CONDITIONS:

- I. Unless the bidder is specifically instructed otherwise In the Request for Proposal, the following terms and conditions will apply to all contracts or purchase agreements made with the State of New Jersey. These terms are in addition to the terms and conditions set forth in the Request for Proposal (RFP) and should be read in conjunction with same unless the RFP specifically indicates otherwise. If a bidder proposes changes or modifications or takes exception to any of the State's terms and conditions, the bidder must so state specifically in writing in the bid proposal. Any proposed change, modification or exception in the State's terms and conditions by a bidder will be a factor in the determination of an award of a contractor purchase agreement.
- II. All of the State's terms and conditions will become a part of any contract(s) or order(s) awarded as a result of the Request for Proposal, whether stated in part, in summary or by reference. In the event the bidder's terms and conditions conflict with the State's, the State's terms and conditions will prevail, unless the bidder is notified in writing of the State's acceptance of the bidder's terms and conditions.
- III. The statutes, laws or codes cited are available for review at the New Jersey State Library, 185 West State Street, Trenton, New Jersey 08625.
- IV. If awarded a contract or purchase agreement, the bidder's status shall be that of any independent principal and not as an employee of the State.

1. STATE LAW REQUIRING MANDATORY COMPLIANCE BY ALL CONTRACTORS

- 1.1 BUSINESS REGISTRATION** –Effective September 1, 2004, pursuant to an amendment to N.J.S.A. 52:32-44, State and local entities (including the Division of Purchase and Property) are prohibited from entering into a contract with an entity unless the contractor has provided a copy of its business registration certificate (or interim registration) as part of its bid submission. Failure to submit a copy of the Business Registration Certificate within the bid proposal may be cause for rejection of the bid proposal.

The contractor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury the use tax due pursuant to the "Sales and Use Tax Act, P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.) on all their sales of tangible personal property delivered into the State. This requirement shall apply to all contracts awarded on and after September 1, 2004. Any questions in this regard can be directed to the Division of Revenue at (609) 292-1730. Form NJ-REG can be filed online at <http://www.state.nj.us/treasury/revenue/busregcert.htm>

- 1.2 ANTI-DISCRIMINATION** - All parties to any contract with the State of New Jersey agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A.10:5-1 et seq. and N.J.S.A.10:5-31 through 10:5-38, and all rules and regulations issued there under.
- 1.3 PREVAILING WAGE ACT** - The New Jersey Prevailing Wage Act, N.J.S.A. 34: 11-56.26 et seq. is hereby made part of every contract entered into on behalf of the State of New Jersey through the Division of Purchase and Property, except those contracts which are not within the contemplation of the Act. The bidder's signature on this proposal is his guarantee that neither he nor any subcontractors he might employ to perform the work covered by this proposal has been suspended or debarred by the Commissioner, Department of Labor for violation of the provisions of the Prevailing Wage Act and/or the Public Works Contractor Registration Acts; the bidder's signature on the proposal is also his guarantee that he and any subcontractors he might employ to perform the work covered by this proposal will comply with the provisions of the Prevailing Wage and Public Works Contractor Registration Acts, where required.
- 1.3(a) PUBLIC WORKS CONTRACTOR REGISTRATION ACT** - The New Jersey Public Works Contractor Registration Act requires all contractors, subcontractors and lower tier subcontractors who bid on or engage in any contract for public work as defined in N.J.S.A. 34:11-56.26 be first registered with the New Jersey Department of Labor and Workforce Development. Any questions regarding the registration process should be directed to the Division of Wage and Hour Compliance at (609) 292-9464 or <http://www.nj.gov/labor/lssse/lspubcon.html>.
- 1.4 AMERICANS WITH DISABILITIES ACT** - The contractor must comply with all provisions of the Americans With Disabilities Act (ADA), P.L 101-336, in accordance with 42 U.S.C. 12101 et seq.

State of New Jersey Standard Terms and Conditions

Applicable to all advertised DPP Procurements unless otherwise indicated

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- 1.5 THE WORKER AND COMMUNITY RIGHT TO KNOW ACT** - The provisions of N.J.S.A. 34:5A-I et seq. which require the labeling of all containers of hazardous substances are applicable to this contract. Therefore, all goods offered for purchase to the State must be labeled by the contractor in compliance with the provisions of the Act.
- 1.6 OWNERSHIP DISCLOSURE** - Contracts for any work, goods or services cannot be issued to any corporation or partnership unless prior to or at the time of bid submission the bidder has disclosed the names and addresses of all its owners holding 10% or more of the corporation or partnership's stock or interest. Refer to N.J.S.A. 52:25-24.2.
- 1.7 COMPLIANCE - LAWS** - The contractor must comply with all local, state and federal laws, rules and regulations applicable to this contract and to the goods delivered and/or services performed hereunder.
- 1.8 COMPLIANCE - STATE LAWS** - It is agreed and understood that any contracts and/or orders placed as a result of this proposal shall be governed and construed and the rights and obligations of the parties hereto shall be determined in accordance with the laws of the STATE OF NEW JERSEY.
- 1.9 COMPLIANCE - CODES** - The contractor must comply with NJUCC and the latest NEC70, B.O.C.A. Basic Building code, OSHA and all applicable codes for this requirement. The contractor will be responsible for securing and paying all necessary permits, where applicable.
- 1.5 THE WORKER AND COMMUNITY RIGHT TO KNOW ACT** - The provisions of N.J.S.A. 34:5A-I et seq. which require the labeling of all containers of hazardous substances are applicable to this contract. Therefore, all goods offered for purchase to the State must be labeled by the contractor in compliance with the provisions of the Act.
- 1.6 OWNERSHIP DISCLOSURE** - Contracts for any work, goods or services cannot be issued to any corporation or partnership unless prior to or at the time of bid submission the bidder has disclosed the names and addresses of all its owners holding 10% or more of the corporation or partnership's stock or interest. Refer to N.J.S.A. 52:25-24.2.
- 1.7 COMPLIANCE - LAWS** - The contractor must comply with all local, state and federal laws, rules and regulations applicable to this contract and to the goods delivered and/or services performed hereunder.
- 1.8 COMPLIANCE - STATE LAWS** - It is agreed and understood that any contracts and/or orders placed as a result of this proposal shall be governed and construed and the rights and obligations of the parties hereto shall be determined in accordance with the laws of the STATE OF NEW JERSEY.
- 1.9 COMPLIANCE - CODES** - The contractor must comply with NJUCC and the latest NEC70, B.O.C.A. Basic Building code, OSHA and all applicable codes for this requirement. The contractor will be responsible for securing and paying all necessary permits, where applicable.

2. LIABILITIES

- 2.1 LIABILITY - COPYRIGHT** - The contractor shall hold and save the State of New Jersey, its officers, agents, servants and employees, harmless from liability of any nature or kind for or on account of the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of his contract.
- 2.2 INDEMNIFICATION** - The contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend, and save harmless the State of New Jersey and its employees from and against any and all claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith on account of the loss of life, property or injury or damage to the person, body or property of any person or persons whatsoever, which shall arise from or result directly or indirectly from the work and/or materials supplied under this contract. This indemnification obligation is not limited by, but is in addition to the insurance obligations contained in this agreement.
- 2.3 INSURANCE** - The contractor shall secure and maintain in force for the term of the contract liability insurance as provided herein. The Contractor shall provide the State with current certificates of insurance for all coverages and renewals thereof, naming the State as an Additional Insured and shall contain the provision that the insurance provided in the certificate shall not be canceled for any reason except after thirty days written notice to:

STATE OF NEW JERSEY
Purchase Bureau – Bid Ref. #

The insurance to be provided by the contractor shall be as follows:

State of New Jersey Standard Terms and Conditions

Applicable to all advertised DPP Procurements unless otherwise indicated

Rev: 07/27/2007 ST&C

- a. Comprehensive General Liability Insurance or its equivalent: The minimum limit of liability shall be \$1,000,000 per occurrence as a combined single limit for bodily injury and property damage. The above required Comprehensive General Liability Insurance policy or its equivalent shall name the State, its officers, and employees as Additional Insureds. The coverage to be provided under these policies shall be at least as broad as that provided by the standard basic, unamended, and unendorsed Comprehensive General Liability Insurance occurrence coverage forms or its equivalent currently in use in the State of New Jersey, which shall not be circumscribed by any endorsement limiting the breadth of coverage.
- b. Automobile liability insurance which shall be written to cover any automobile used by the insured. Limits of liability for bodily injury and property damage shall not be less than \$1 million per occurrence as a combined single limit.
- c. Worker's Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than:
 - \$1,000,000 BODILY INJURY, EACH OCCURRENCE
 - \$1,000,000 DISEASE EACH EMPLOYEE
 - \$1,000,000 DISEASE AGGREGATE LIMIT

3. TERMS GOVERNING ALL PROPOSALS TO NEW JERSEY PURCHASE BUREAU

3.1 CONTRACT AMOUNT - The estimated amount of the contract(s), when stated on the Advertised Request for Proposal form, shall not be construed as either the maximum or minimum amount which the State shall be obliged to order as the result of this Request for Proposal or any contract entered into as a result of this Request for Proposal.

3.2 CONTRACT PERIOD AND EXTENSION OPTION - If, in the opinion of the Director of the Division of Purchase and Property, it is in the best interest of the State to extend a contract entered into as a result of this Request for Proposal, the contractor will be so notified of the Director's Intent at least 30 days prior to the expiration date of the existing contract. The contractor shall have 15 calendar days to respond to the Director's request to extend the contract. If the contractor agrees to the extension, all terms and conditions of the original contract, including price, will be applicable.

3.3 BID AND PERFORMANCE SECURITY

- a. Bid Security - If bid security is required, such security must be submitted with the bid in the amount listed in the Request for Proposal, see N.J.A.C. 17: 12- 2.4. Acceptable forms of bid security are as follows:
 1. A properly executed individual or annual bid bond issued by an insurance or security company authorized to do business in the State of New Jersey, a certified or cashier's check drawn to the order of the Treasurer, State of New Jersey, or an irrevocable letter of credit drawn naming the Treasurer, State of New Jersey as beneficiary issued by a federally insured financial institution.
 2. The State will hold all bid security during the evaluation process. As soon as is practicable after the completion of the evaluation, the State will:
 - a. Issue an award notice for those offers accepted by the State;
 - b. Return all bond securities to those who have not been issued an award notice.

All bid security from contractors who have been issued an award notice shall be held until the successful execution of all required contractual documents and bonds (performance bond, insurance, etc. If the contractor fails to execute the required contractual documents and bonds within thirty (30) calendar days after receipt of award notice, the contractor may be found in default and the contract terminated by the State. In case of default, the State reserves all rights inclusive of, but not limited to, the right to purchase material and/or to complete the required work in accordance with the New Jersey Administrative Code and to recover any actual excess costs from the contractor. Collection against the bid security shall be one of the measures available toward the recovery of any excess costs.

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- b. Performance Security - If performance security is required, the successful bidder shall furnish performance security in such amount on any award of a term contract line item purchase, see N.J.A.C. 17: 12- 2.5. Acceptable forms of performance security are as follows:

1. The contractor shall be required to furnish an irrevocable security in the amount listed in the Request for Proposal payable to the Treasurer, State of New Jersey, binding the contractor to provide faithful performance of the contract.
2. The performance security shall be in the form of a properly executed individual or annual performance bond issued by an insurance or security company authorized to do business in the State of New Jersey, a certified or cashier's check drawn to the order of the Treasurer, State of New Jersey, or an irrevocable letter of credit drawn naming the Treasurer, State of New Jersey as beneficiary issued by a federally insured financial institution.

The Performance Security must be submitted to the State within 30 days of the effective date of the contract award and cover the period of the contract and any extensions thereof. Failure to submit performance security may result in cancellation of contract for cause pursuant to provision 3.5b,1, and nonpayment for work performed.

3.4 VENDOR RIGHT TO PROTEST - INTENT TO AWARD - Except in cases of emergency, bidders have the right to protest the Director's proposed award of the contract as announced in the Notice of Intent to Award, see N.J.A.C. 17:12-3.3. Unless otherwise stated, a bidder's protest must be submitted to the Director within 10 working days after receipt of written notification that its bid has not been accepted or that an award of contract has been made. In the public interest, the Director may shorten this protest period, but shall provide at least 48 hours for bidders to respond to a proposed award. In cases of emergency, stated in the record, the Director may waive the appeal period. See N.J.A.C. 17: 12- 3 et seq.

3.5 TERMINATION OF CONTRACT

- a. For Convenience

Notwithstanding any provision or language in this contract to the contrary, the Director may terminate at any time, in whole or in part, any contract entered into as a result of this Request for Proposal for the convenience of the State, upon no less than 30 days written notice to the contractor.

- b. For cause:

1. Where a contractor fails to perform or comply with a contract, and/or fails to comply with the complaints procedure in N.J.A.C. 17: 12-4.2 et seq., the Director may terminate the contract upon 10 days notice to the contractor with an opportunity to respond.
2. Where a contractor continues to perform a contract poorly as demonstrated by formal complaints, late delivery, poor performance of service, short-shipping etc., so that the Director is repeatedly required to use the complaints procedure in N.J.A.C. 17:12-4.2 et seq. the Director may terminate the contract upon 10 days notice to the contractor with an opportunity to respond.

- c. In cases of emergency the Director may shorten the time periods of notification and may dispense with an opportunity to respond.

- d. In the event of termination under this section, the contractor will be compensated for work performed in accordance with the contract, up to the date of termination. Such compensation may be subject to adjustments.

3.6 COMPLAINTS - Where a bidder has a history of performance problems as demonstrated by formal complaints and/or contract cancellations for cause pursuant to 3.5b a bidder may be bypassed for this award. See N.J.A.C. 17:12-2.8.

3.7 EXTENSION OF CONTRACT QUASI-STATE AGENCIES - It is understood and agreed that in addition to State Agencies, Quasi-State Agencies may also participate in this contract. Quasi-State Agencies are defined in N.J.S.A. 52:27B-56.1 as any agency, commission, board, authority or other such governmental entity which is established and is allocated to a State department or any bi-state governmental entity of which the State of New Jersey is a member.

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3.8 EXTENSION OF CONTRACTS TO POLITICAL SUBDIVISIONS, VOLUNTEER FIRE DEPARTMENTS AND FIRST AID SQUADS, AND INDEPENDENT INSTITUTIONS OF HIGHER EDUCATION - N.J.S.A. 52:25-16.1

permits counties, municipalities and school districts to participate in any term contract(s), that may be established as a result of this proposal.

N.J.S.A. 52:25-16.2 permits volunteer fire departments, volunteer first aid squads and rescue squads to participate in any term contract(s) that may be established as a result of this proposal.

N.J.S.A. 52:25-16.5 permits independent institutions of higher education to participate in any term contract(s) that may be established as a result of this proposal, provided that each purchase by the Independent Institution of higher education shall have a minimum cost of \$500.

In order for the State contract to be extended to counties, municipalities, school districts, volunteer fire departments, first aid squads and independent institutions of higher education the bidder must agree to the extension and so state in his bid. proposal. The extension to counties municipalities, school districts, volunteer fire departments, first aid squads and Independent Institutions of higher education must 'be under the same terms and conditions, including price, applicable to the State.

3.9 EXTENSIONS OF CONTRACTS TO COUNTY COLLEGES - N.J.S.A. 18A:64A - 25. 9 permits any college to participate in any term contract(s) that may be established as a result of this proposal.

3.10 EXTENSIONS OF CONTRACTS TO STATE COLLEGES - N.J.S.A. 18A:64- 60 permits any State College to participate in any term contract(s) that may be established as a result of this proposal.

3.11 SUBCONTRACTING OR ASSIGNMENT - The contract may not be subcontracted or assigned by the contractor, in whole or in part, without the prior written consent of the Director of the Division of Purchase and Property. Such consent, if granted, shall not relieve the contractor of any of his responsibilities under the contract.

In the event the bidder proposes to subcontract for the services to be performed under the terms of the contract award, he shall state so in his bid and attach for approval a list of said subcontractors and an Itemization of the products and/or services to be supplied by them.

Nothing contained in the specifications shall be construed as creating any contractual relationship between any subcontractor and the State.

3.12 MERGERS, ACQUISITIONS - If, subsequent to the award of any contract resulting from this Request for Proposal, the contractor shall merge with or be acquired by another firm, the following documents must be submitted to the Director, Division of Purchase & Property.

- a. Corporate resolutions prepared by the awarded contractor and new entity ratifying acceptance of the original contract, terms, conditions and prices.
- b. State of New Jersey Bidders Application reflecting all updated information including ownership disclosure, pursuant to provision 1.5.
- c. Vendor Federal Employer Identification Number.

The documents must be submitted within thirty (30) days of completion of the merger or acquisition. Failure to do so may result in termination of contract pursuant to provision 3.5b.

If subsequent to the award of any contract resulting from this Request for Proposal, the contractor's partnership or corporation shall dissolve, the Director, Division of Purchase & Property must be so notified. All responsible parties of the dissolved partnership or corporation must submit to the Director in writing, the names of the parties proposed to perform the contract, and the names of the parties to whom payment should be made. No payment should be made until all parties to the dissolved partnership or corporation submit the required documents to the Director.

3.13 PERFORMANCE GUARANTEE OF BIDDER - The bidder hereby certifies that:

- a. The equipment offered is standard new equipment, and is the manufacturer's latest model in production, with parts regularly used for the type of equipment offered; that such parts are all in production and not likely to be

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discontinued; and that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice.

- b. All equipment supplied to the State and operated by electrical current is UL listed where applicable.
- c. All new machines are to be guaranteed as fully operational for the period stated in the Request For Proposal from time of written acceptance by the State. The bidder will render prompt service without charge, regardless of geographic location.
- d. Sufficient quantities of parts necessary for proper service to equipment will be maintained at distribution points and service headquarters.
- e. Trained mechanics are regularly employed to make necessary repairs to equipment in the territory from which the service request might emanate within a 48-hour period or within the time accepted as industry practice.
- f. During the warranty period the contractor shall replace immediately any material which is rejected for failure to meet the requirements of the contract.
- g. All services rendered to the State shall be performed in strict and full accordance with the specifications stated in the contract. The contract shall not be considered complete until final approval by the State's using agency is rendered.

3.14 DELIVERY GUARANTEES - Deliveries shall be made at such time and in such quantities as ordered in strict accordance with conditions contained in the Request for Proposal.

The contractor shall be responsible for the delivery of material in first class condition to the State's using agency or the purchaser under this contract and in accordance with good commercial practice.

Items delivered must be strictly in accordance with the Request for Proposal.

In the event delivery of goods or services is not made within the number of days stipulated or under the schedule defined in the Request for Proposal, the using agency may be authorized to obtain the material or service from any available source, the difference in price, if any, to be paid by the contractor failing to meet his commitments.

3.15 DIRECTOR'S RIGHT OF FINAL BID ACCEPTANCE - The Director reserves the right to reject any or all bids, or to award in whole or in part if deemed to be in the best interest of the State to do so. The Director shall have authority to award orders or contracts to the vendor or vendors best meeting all specifications and conditions in accordance with N.J.S.A. 52:34-12. Tie bids will be awarded by the Director in accordance with N.J.A.C.17:12-2.1D.

3.16 BID ACCEPTANCES AND REJECTIONS - The provisions of N.J.A.C. 17:12-2.9, relating to the Director's right, to waive minor elements of non-compliance with bid specifications and N.J.A.C. 17: 12- 2.2 which defines causes for automatic bid rejection, apply to all proposals and bids.

3.17 STATE'S RIGHT TO INSPECT BIDDER'S FACILITIES - The State reserves the right to inspect the bidder's establishment before making an award, for the purposes of ascertaining whether the bidder has the necessary facilities for performing the contract.

The State may also consult with clients of the bidder during the evaluation of bids. Such consultation is intended to assist the State in making a contract award which is most advantageous to the State.

3.18 STATE'S RIGHT TO REQUEST FURTHER INFORMATION - The Director reserves the right to request all information which may assist him or her in making a contract award, including factors necessary to evaluate the bidder's financial capabilities to perform the contract. Further, the Director reserves the right to request a bidder to explain, in detail, how the bid price was determined.

3.19 MAINTENANCE OF RECORDS - The contractor shall maintain records for products and/or services delivered against the contract for a period of three (3) years from the date of final payment. Such records shall be made available to the State upon request for purposes of conducting an audit or for ascertaining information regarding dollar volume or number of transactions.

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3.20 ASSIGNMENT OF ANTITRUST CLAIM(S) - The contractor recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser. Therefore, and as consideration for executing this contract, the contractor, acting herein by and through its duly authorized agent, hereby conveys, sells, assigns, and transfers to the State of New Jersey, for itself and on behalf of its political subdivisions and public agencies, all right, title and interest to all claims and causes of action it may now or hereafter acquire under the antitrust laws of the United States or the State of New Jersey, relating to the particular goods and services purchased or acquired by the State of New Jersey or any of its political subdivisions or public agencies pursuant to this contract.

In connection with this assignment, the following are the express obligations of the contractor;

- a. It will take no action which will in any way diminish the value of the rights conveyed or assigned hereunder.
- b. It will advise the Attorney General of New Jersey:
 1. in advance of its intention to commence any action on its own behalf regarding any such claim or cause(s) of action;
 2. immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s) of the pendency of such action.
- c. It will notify the defendants in any antitrust suit of the fact of the within assignment at the earliest practicable opportunity after the contractor has initiated an action on its own behalf or becomes aware that such an action has been filed on its behalf by another person. A copy of such notice will be sent to the Attorney General of New Jersey.

Furthermore, it is understood and agreed that in the event any payment under any such claim or cause of action is made to the contractor, it shall promptly pay over to the State of New Jersey the allotted share thereof, if any, assigned to the State hereunder.

4. TERMS RELATING TO PRICE QUOTATION

4.1 PRICE FLUCTUATION DURING CONTRACT - Unless otherwise noted by the State, all prices quoted shall be firm through issuance of contract or purchase order and shall not be subject to increase during the period of the contract.

In the event of a manufacturer's or contractor's price decrease during the contract period, the State shall receive the full benefit of such price reduction on any undelivered purchase order and on any subsequent order placed during the contract period. The Director of Purchase and Property must be notified, in writing, of any price reduction within five (5) days of the effective date.

Failure to report price reductions will result in cancellation of contract for cause, pursuant to provision 3.5b.1.

4.2 DELIVERY COSTS - Unless otherwise noted in the Request for Proposal, all prices for items in bid proposals are to be submitted F.O.B. Destination. Proposals submitted other than F.O.B. Destination may not be considered. Regardless of the method of quoting shipments, the contractor shall assume all costs, liability and responsibility for the delivery of merchandise in good condition to the State's using agency or designated purchaser.

F.O.B. Destination does not cover "spotting" but does include delivery on the receiving platform of the ordering agency at any destination in the State of New Jersey unless otherwise specified. No additional charges will be allowed for any additional transportation costs resulting from partial shipments made at contractor's convenience when a single shipment is ordered. The weights and measures of the State's using agency receiving the shipment shall govern.

4.3 C.O.D. TERMS - C.O.D. terms are not acceptable as part of a bid proposal and will be cause for rejection of a bid.

4.4 TAX CHARGES - The State of New Jersey is exempt from State sales or use taxes and Federal excise taxes. Therefore, price quotations must not include such taxes. The State's Federal Excise Tax Exemption number is 22-75-0050K.

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4.5 PAYMENT TO VENDORS - Payment for goods and/or services purchased by the State will only be made against State Payment Vouchers. The State bill form in duplicate together with the original Bill of Lading, express receipt and other related papers must be sent to the consignee on the date of each delivery. Responsibility for payment rests with the using agency which will ascertain that the contractor has performed in a proper and satisfactory manner in accordance with the terms and conditions of the award. Payment will not be made until the using agency has approved payment.

For every contract the term of which spans more than one fiscal year, the State's obligation to make payment beyond the current fiscal year is contingent upon legislative appropriation and availability of funds.

The State of New Jersey now offers State contractors the opportunity to be paid through the MasterCard procurement card (p-card). A contractor's acceptance and a State Agency's use of the p-card, however, is optional. P-card transactions do not require the submission of either a contractor invoice or a State payment voucher. Purchasing transactions utilizing the p-card will usually result in payment to a contractor in three days. A Contractor should take note that there will be a transaction processing fee for each p-card transaction. To participate, a contractor must be capable of accepting MasterCard. For more information, call your bank or any merchant services company.

4.6 NEW JERSEY PROMPT PAYMENT ACT - The New Jersey Prompt Payment Act N.J.S.A. 52:32-32 et seq. requires state agencies to pay for goods and services within sixty (60) days of the agency's receipt of a properly executed State Payment Voucher or within sixty (60) days of receipt and acceptance of goods and services, whichever is later. Properly executed performance security, when required, must be received by the state prior to processing any payments for goods and services accepted by state agencies. Interest will be paid on delinquent accounts at a rate established by the State Treasurer. Interest will not be paid until it exceeds \$5.00 per properly executed invoice.

Cash discounts and other payment terms included as part of the original agreement are not affected by the Prompt Payment Act.

4.7 RECIPROCITY - In accordance with N.J.S.A. 52:32-1.4 and N.J.A.C. 17: 12- 2. 13, the State of New Jersey will invoke reciprocal action against an out-of-State bidder whose state or locality maintains a preference practice for their bidders.

5. CASH DISCOUNTS - Bidders are encouraged to offer cash discounts based on expedited payment by the State. The State will make efforts to take advantage of discounts, but discounts will not be considered in determining the lowest bid.

- a. Discount periods shall be calculated starting from the next business day after the recipient has accepted the goods or services received a properly signed and executed State Payment Voucher form and, when required, a properly executed performance security, whichever is latest.
- b. The date on the check issued by the State in payment of that Voucher shall be deemed the date of the State's response to that Voucher.

6. STANDARDS PROHIBITING CONFLICTS OF INTEREST - The following prohibitions on vendor activities shall apply to all contracts or purchase agreements made with the State of New Jersey, pursuant to Executive Order No. 189 (1988).

- a. No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b and e., in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or partnership, firm or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52: 13D-13g.
- b. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the Attorney General and the Executive Commission on Ethical Standards.
- c. No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee or special

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State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52: 130-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

- d. No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.
- e. No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the vendor or any other person.
- f. The provisions cited above in paragraph 6a through 6e shall not be construed to prohibit a State officer or employee or Special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate under paragraph 6c.

7. NOTICE TO ALL BIDDERS SET-OFF FOR STATE TAX NOTICE

Please be advised that, pursuant to P.L. 1995, c. 159, effective January 1, 1996, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off that taxpayer's or shareholder's share of the payment due the taxpayer, partnership, or S corporation. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off under this act.

The Director of the Division of Taxation shall give notice to the set-off to the taxpayer and provide an opportunity for a hearing within 30 days of such notice under the procedures for protests established under R.S. 54:49-18. No requests for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. Interest that may be payable by the State, pursuant to P.L. 1987, c.184 (c.52:32-32 et seq.), to the taxpayer shall be stayed.

- 8. APPLICABLE LAW** - This contract and any and all litigation arising therefrom or related thereto shall be governed by the applicable laws, regulations and rules of evidence of the State of New Jersey without reference to conflict of laws principles.