



Request for Proposal 06-X-38521

For: Temporary Emergency Assistance Program, Food Storage & Delivery

Event	Date	Time
Bidder's Electronic Question Due Date (Refer to RFP Section 1.3.1 for more information.)	02/03/06	4PM
Mandatory Pre-bid Conference (Refer to RFP Section 1.3.3 for important details about the new electronic bid option.)	Not Applicable	TIME
Mandatory Site Visit (Refer to RFP Section 1.3.2 for more information.)	Not applicable	TIME
Bid Submission Due Date (Refer to RFP Section 1.3.5 for more information.)	02/22/06	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.

<p>Set-Aside Small Business (Refer to RFP Section 4.4.1.8 for more information.)</p>	<p>Status</p> <p><input checked="" type="checkbox"/> Not Applicable</p> <p><input type="checkbox"/> Entire Contract</p> <p><input type="checkbox"/> Partial Contract</p> <p><input type="checkbox"/> Sub Contracting Only</p>	<p>Category</p> <p><input type="checkbox"/> I</p> <p><input type="checkbox"/> II</p> <p><input type="checkbox"/> III</p>
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RFP Issued By

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

Using [Agency/Agencies](#)

New Jersey Department of Agriculture
(NJDA)

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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 New Jersey Department of Agriculture (NJDA). The purpose of this RFP is to solicit bid proposals for the storage and delivery of agricultural food commodities donated by the United States Department of Agriculture (USDA) under The Emergency Food Assistance Program (TEFAP) to the New Jersey Department of Agriculture.

The intent of this RFP is to award (a) contract to that responsible bidder whose bid proposals, 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 & 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 this RFP and should be read in conjunction with them unless the RFP specifically indicates otherwise.

1.2 BACKGROUND

The Emergency Food Assistance Program began in January 1982, the program goal shifted from one of reducing excess Federal inventories to a more structured feeding program, which provides a variety of nutritional foods designed to supplement the diets of needy individuals. The NJDA contracts with several "Emergency Feeding Organizations," which are non-profit agencies specifically organized to provide effective food handling practices. EFO's are located geographically at various points throughout New Jersey to receive, store, and distribute TEFAP foods in direct response to local area needs. These agencies, under regulations issued by the USDA and NJDA, have the ability to proportion and monitor the distribution of these foods at the local level.

Although the amount of food made available under TEFAP fluctuates, there remains a need for the NJDA to have in place warehousing and delivery systems in order to keep the EFO's supplied with whatever commodities are made available.

This RFP provides the specific requirements for food storage facilities and delivery of foods which include the storage of dry, cooler and freezer federal food commodities, for the Northern and Southern Zones of the State of New Jersey.

Northern Zones (A) are identified as the following counties; Bergen, Essex, Hunterdon, Hudson, Middlesex, Morris, Passaic, Somerset, Sussex, Union and Warren.

Southern Zones (B) are identified as the following counties; Mercer, Burlington, Ocean, Cape May, Camden, Monmouth, Gloucester, Salem, Cumberland and Atlantic.

Availability of Commodities: The State's obligation to continue this agreement is contingent upon the continued donation, by the USDA, of commodity foods for which warehousing is required. If commodities are not made available by the USDA, through The Emergency Food Assistance Program (TEFAP), the State of New Jersey has no obligation to guarantee any volume of product for storage.

Additionally, the NJDA orders commodities for direct delivery to (EFO's) storage facilities. The amount of the direct ship will be determined by the EFO's capabilities. Award of this contract will in no way limit the volume the State will direct ship to EFO's. The amount, variety and weight of USDA donated foods are subject to change at any time. The attachments to this RFP detail the quantities that were available for the period January through December 2004. Similar quantities and varieties are expected for FFY's 2006 through 2009. Vendor service is to be provided on an as needed basis.

Section I (Warehousing) and Section II (Trucking) of this Request for Proposal(RFP) must be bid as a all or none bid. Bidders must submit proposals for both, warehousing and trucking for Zone A and Zone B. **BIDS PROPOSALS FOR ONLY STORAGE OR ONLY TRUCKING WILL NOT BE CONSIDERED.**

This is a repurchase of the **Temporary Emergency Assistance Program, Food Storage and Delivery** term contract, presently due to expire on April 30, 2006. Bidders who are interested in the current contract specifications and pricing information may review the current contract T1076 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.shtml>

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.

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>

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. 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.

All bid proposals, with the exception of information determined by the State 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 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.

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

Dunnage – The debris used to protect or support freight that remains in a rail car after the freight has been unloaded.

Demurrage – Charges that accrue after the allowable free time for unloading goods has expired.

Spotting- The placing of a tractor trailer at an acceptable location for unloading.

3.0 COMMODITY DESCRIPTION/SCOPE OF WORK

3.1 WAREHOUSING

3.1.1 FACILITY

The Contractor should have, as part of their business operation, a warehouse that will accommodate the storage of dry, refrigerated and frozen commodities, under one roof.

The Contractor shall store commodities in warehouse(s) as specified in this RFP. The specific addresses are to be listed by Contractor on the Contractor data sheets submitted with its bid. If, at any point during the contract period, the Contractor is unable to provide the listed space, they are responsible for obtaining the required space and absorbing any related cost increase.

3.1.1.1 ELECTRONIC DATA PROCESSING INFORMATION/WEB-BASED SYSTEM REQUIREMENTS

The NJDA reserves the right to require the successful bidder(s) to maintain an infrastructure support to facilitate electronic communications between the NJDA and warehouse location(s), through the internet, on secured web-based system for the receipt, storage and delivery of federal donated TEFAP food commodities.

3.1.2 THE STORAGE TEMPERATURE RANGES

Dry Storage - 45 Degrees F - 80 Degrees F

Refrigerated - 34 Degrees F - 38 Degrees F

Frozen Storage - Maximum - 10 Degrees F

Freezer/Cooler - All freezer, dry and cooler facilities must be available at one (1) storage facility location. Storage temperature records (charts) must be maintained by the Contractor on a continual basis and must be available for review, upon request, by representatives of the NJDA or USDA representatives.

3.1.3 GUARANTEE OF PERSONNEL

The Contractor shall guarantee and insure that they are able to supply emergency personnel to continue operations in the event of an act of war, terrorism or other man-made or natural disaster. During this period, all personnel shall be available to insure that the Contractor's warehouse shall be operational and that all authorized recipients shall be able to receive commodities for delivery to the disaster area as directed by the Office of Emergency Management (EOM) Department of Law and Public Safety, Division of State Police or upon direction of the New Jersey Department of Agriculture (NJDA).

3.1.4 FACILITY SECURITY

The following shall be used as a guide for securing the actual food storage facility:

Monitor visitors and restrict access to the establishment;

Monitor all incoming and outgoing vehicles;

Permit access only to personnel authorized to conduct food handling and to storage;

The entire perimeter of the food storage facility must be secured with adequate fencing and security;

Provide adequate interior and exterior lighting;

Restrict access to laboratory and sensitive materials with key cards or other such security devices;

Properly store and track hazardous chemicals like cleaning and sanitizing agents, pesticides, and processing aids.

3.1.4.1 PERSONNEL SECURITY ISSUES

Employees that have direct contact with food products shall be subject to the following guidelines:

The Contractor must establish pre-hiring screening procedures, including criminal background checks, immigration status checks, and obtaining and verifying work references.

The Contractor must establish an identification system, including identification badges.

The Contractor shall limit access so that employees can only enter those areas necessary for their job functions and provide food handling and security training to all new employees.

3.1.4.2 FOR COMPUTER SYSTEM SECURITY

The successful bidder(s) shall secure critical data systems and allow computer access only personnel with the appropriate clearances.

The Contractor shall eliminate computer access to past employees, and establish a system of tracing computer transactions.

3.1.5 APPLICABLE FEDERAL AND STATE STORAGE LAWS AND REGULATIONS

Contractor shall comply with applicable Federal and State storage laws and regulations which includes the "Standards for Warehousing, Distribution and Storage of Federal Donated Foods" (7 CFR Part 250.14) & the "Shipment and Receipt of Foods (FNS Instruction 709-5)". This shall include, but is not limited to, good sanitation practices, rodent control, weevil infestation control for grain, proper palletization, proper location and stacking, removal of broken cases to a secured area, separation of in-house damage from railroad damage and maintenance of proper storage temperatures.

A. The State Contract Manager reserves the right to assign representatives of the State to visit the storage facilities of the Contractor at any time during the course of the contract for any possible violations of the above.

B. Commodities stored for TEFAP are to be separately identified. If the Contractor is storing for any federal food program(s) other than TEFAP, the commodities being stored for the State of New Jersey must be clearly identified. Identification shall consist of the word "TEFAP" stamped on all four sides of each pallet, at the top and bottom.

C. If the Contractor is storing TEFAP foods for any other State Government, other than New Jersey, each individual State's foods must be separated and identified by State name.

D. The NJDA occasionally receives commercial food donations (private donations) for use in TEFAP. In such cases, the NJDA will assume and pay the cost of storing and transporting these foods to the EFO's. The Contractor will be required to furnish warehousing services at the same rate of the TEFAP program.

3.1.6 DELIVERY RECEIPTS

All delivery receipts are to be signed after commodities have been loaded on delivery vehicle(s). All commodities will be picked up at one loading facility. The loading facility must be in operation between the hours of 8:00 A.M. to 3:00 P.M. daily, Monday through Friday.

A. The Contractor's warehouse must have a truck siding(s) (loading platform) capable of handling a minimum of one (1) inbound truck delivery and one (1) outbound truck pick-up per day. The maximum number of inbound truck deliveries on any given day is estimated at six (6). The maximum number of outbound truck pick-ups on any given day is estimated at six (6). Actual inbound/ outbound schedules are dependent upon USDA purchases.

B. The Contractor's warehouse servicing the State of New Jersey, for TEFAP, shall make those commodities available for delivery to the designated EFOs on palletized loads, via tractor-trailer. The shipment of the stored TEFAP commodities shall be made between the warehouse, contracted trucker, NJDA, and EFO's.

In order to preserve product quality; when fresh produce arrives at a warehouse, the contractor should notify the NJDA to coordinate special deliveries to the EFOs in the most expeditious time frame.

3.1.7 DELIVERIES

A. USDA requires that commodities delivered by truck be palletized/unitized. The Contractor is responsible, but is not limited to unload all shipments in the time frames prescribed by the USDA.

B. Unloading Appointments - Trucking companies are requested by USDA Farm Service Agency (FSA) to give twenty-four (24) hour notice of arrival to a warehouse. Although a trucking firm has no obligation to make these appointments, to do so benefits both carrier and receivers.

Generally, if a carrier:

- a) arrives without an unloading appointment
- b) calls less than twenty-four (24) hours in advance or
- c) is late for an appointment,

The Contractor should make every attempt to unload the shipment promptly.

C. Time to Make Appointments - The Contractor has a "reasonable" time to arrange an unloading appointment. If the Contractor cannot receive the freight, the trucker has the right to protect the commodities by placing in storage, if necessary.

D. Unloading Responsibilities

- 1. The Contractor is responsible for unloading palletized loads. The dunnage must be removed and disposed of by the Contractor.
- 2. On a non-palletized loads, the driver is responsible for unloading to the tailgate only.

E. Free Time Allowance and Detention Charges

The USDA allows the following free time for unloading shipments at intermediate and final destinations:

- Non-palletized loads - up to six (6) hours
- Palletized loads - up to two (2) hours

Full and split loads will be allowed the same free time. This free time allowance is computed from the time of arrival or time of scheduled unloading, whichever is later. Allowance for lunch is not allowed.

Charges for detention of shipments beyond the free time allowed by the USDA will be payable by the Contractor.

F. Detention Records - Records maintained by the Contractor should include:

1. Commodity
2. Order No., Contract No., etc.
3. Name of trucker
4. Truck/Trailer No.
5. Date/Time of truck driver's notification
6. Date/Time unloading began
7. Date/Time unloading was completed
8. Date/Time vehicle was released for departure
9. Total gross weight of freight unloaded
10. Date/Time agreed upon for arrival of the truck

3.1.8 PALLET EXCHANGE

Arrangements should be made in advance if a pallet exchange is requested. In those instances the Contractor must make arrangements with the shippers on method for exchanging pallets.

3.1.9 SHIPMENTS

The Contractor of USDA to NJDA warehouses is obligated to accept shipments and should be prepared to unload upon receipt.

3.1.10 STATISTICS

To assist the Contractor in bidding on this RFP, the following statistics are being provided. These statistics are based on Calendar Year 2004 receipt and distribution information, unless stated otherwise. They should not be construed as guaranteeing similar amounts for the period of this contract award.

EXHIBIT #3 - Receipt Chart indicates inbound commodity shipments per month for Zone A, in both cases and cwt.

EXHIBIT # 3- Receipt Chart indicates inbound commodity shipments per month for Zone B, in both cases and cwt.

EXHIBIT #3 - Distribution Chart indicates outbound product movement per month for Zone A, in both cases and cwt.

EXHIBIT #3 - Distribution Chart indicates outbound product movement per month for Zone B, in both cases and cwt.

Exhibit #1 - EFO delivery points.

EXHIBIT #2 - TEFAP Commodity Fact Sheet indicates gross/net weights of the commodities handled.

3.1.11 REPORTS, COUNTS AND NOTIFICATION OF SHIPMENTS:

A. The Contractor and the NJDA's distribution program staff will take a physical count of all commodities consigned to the State of New Jersey at the close of the Federal fiscal year, September 30. The federal inventory reconciliation must be completed before October 15, or at a later assigned date as prescribed by the food distribution program, of the NJDA. Damaged commodities will be counted and listed separately.

B. The Contractor shall submit a monthly transactional inventory report to the NJDA's food distribution section, three (3) days after the last day of each month. That transaction inventory shall contain the following information by product description and code number:

- 1) Beginning inventory as of the first day of the month.
- 2) Amount distributed/picked up, identified by recipient and date, or the amount shipped identified by State reference number and/or bill of lading number
- 3) Product transferred in, from other agencies, and so identified.
- 4) Amount shipped by master bill number.
- 5) Separate listing for damaged or "hold" product.
- 6) Ending inventory as of last day of month.

C. When product is received from any source for the account of the NJDA, the Contractor shall provide and record the following information:

- 1) Type and description of product.
- 2) Amount of product received.
- 3) Product is for TEFAP account (if other USDA donated foods are stored).
- 4) Amount of product over, short or damaged.
- 5) Action taken regarding damage.

D. The telephone verbal receipt report will be confirmed by completing USDA form FNS-57 (9-70), (Report of shipment received, over, short and/or damaged). This shall be completed and submitted within ten (10) business days following the telephone call.

E. The Contractor will be notified, in advance, of all incoming and outgoing shipments. When this procedure has been followed, any demurrage or detention incurred by the warehouse in unloading or loading is for the account of the Contractor.

3.1.12 STORAGE INVENTORY SETTLEMENT PROCEDURE

A. The State of New Jersey shall request a physical count of all merchandise owned by the NJDA twice per year. The counting will be done by food distribution staff of the NJDA accompanied by Contractor's representatives. It is understood this inventory will be taken at no additional cost to the State of New Jersey for any labor or equipment used by the Contractor. It is understood that the inventory will be taken in a prompt and careful manner.

B. After the inventory is taken and reconciled by both parties, the Contractor shall reimburse the NJDA, at the current USDA Commodity Price Index Value, the amount of shortage (if any) after completion of all reconciliation. The Contractor will have his final adjusted figures within seventy-two (72) hours after the first count is taken.

NOTE: USDA REGULATIONS, 7 CFR PART 250.15 (C)(2), DOES NOT ALLOW A PERCENTAGE OF WRITE-OFF OF USDA FOODS LOST, DESTROYED, STOLEN, DAMAGED

ETC. WHILE UNDER THE CONTRACTUAL CARE OF A COMMERCIAL VENDOR. ALL USDA FOODS ARE ACCOUNTABLE ON A CASE FOR CASE BASIS AT THE ESTABLISHED USDA COMMODITY PRICE INDEX FILE DELIVERED PRICE.

C. During the period of physical inventory, an item shall be adjusted against a like item. A like item shall be considered as: various size packs of same item; various cheeses of same pack; and various butter of same pack. Failure to comply can be cause for assessment of dollar value of the item short. The assessment shall be based upon USDA current commodity file delivered price. Any overages of unlike items shall be picked up on inventory with no credit value.

D. There will be no adjustments allowed between TEFAP and other NJDA or USDA accounts held by the Contractor.

3.1.13 DAMAGE REPORT PROCEDURE

A. When merchandise is received for the account of the NJDA, the Contractor is responsible to inspect for visible damage and so note on all copies of USDA's carrier delivery ticket before signing for the shipment. This applies to all shipments. Damaged commodities should not be accepted in the warehouse without the expressed permission of the food distribution office of the NJDA. Every attempt should be made to keep the contracted warehouse free from damage. Contractors are required to notify the USDA's carrier and the NJDA of any loss or damage immediately.

B. Damaged commodities should be unloaded and segregated from the other commodities pending instructions from the USDA carrier and the NJDA. When a trailer is received with extensive damage, the warehouse receiver will not unload or accept any portion of the load. The warehouse receiver will notify the USDA carrier and the NJDA immediately.

C. General Requirements

The following actions taken:

1. A record shall be made of the following:

- a) A rail car, truck trailer, container or piggyback trailer initials and number.
- b) Condition and serial numbers of the seal(s) on the door(s) of the car or truck before the car or truck is opened.
- c) Where the shipment was unloaded.
- d) Protection given the car or truck during unloading.
- e) Temperature, if applicable.

2. Each shipment shall be carefully examined before unloading begins to determine whether there is any obvious overage, shortage or damage. If there is, it shall be reported to the agent of the USDA carrier before the entire shipment is unloaded.

3. A careful count and record of the shipment shall be made as it is unloaded. Overages, shortages or damage, discovered as unloading progresses shall be reported to the agent of the USDA delivering carrier before the delivery vehicle is released.

4. The Contractor shall notify the USDA carrier agent immediately by telephone, or in person, upon discovery of an overage, shortage or damage in a shipment. The carrier's agent is obligated to make his inspection as soon as possible, within forty-eight (48) hours, after such notice. The Contractor shall confirm notices of any overages, shortages or

damage in writing to the carrier or its representative. A copy of the confirmation must forward to the USDA's Kansas City, FSA Commodity Office with the Food and Nutritional Service Form FNS-57.

5. A shipment which contains damaged commodities, must be accepted by the Contractor, unless the damage affects all or a major portion of the shipment.

a) Damaged cargo which is still usable for human consumption shall be salvaged and accepted for program use. It is important that usable commodities bearing USDA labels do not get into commercial channels since their appearance for sale causes questions as to the propriety

of their being sold, and many times result in expensive investigations. Damage to containers, without damage to the commodities, is to be remedied by mending or replacing the containers.

Salvage operations may be performed by the Contractor or the carrier, as they mutually agree upon. If canned goods are noticeably dented on the side or end seams, or are otherwise dented so as to seriously distort the shape of the cans, they shall be accepted. Seriously rusted cans, or cans that are "springers," "flippers," or "swellers" are not considered salvageable. b) Damaged cartons which cannot be salvaged for the program shall be disposed of as follows:

1) Commodities that are unfit for any use, and which are in such condition as to contaminate or infest storage space, or which have been condemned by federal, State or local health officials, shall be destroyed in accordance with applicable health and sanitation laws or regulations.

2) Commodities that are fit for other than human consumption may be sold for non-human or non-food use, released to the USDA delivering carrier upon its demand, used as animal feed in public institutions or destroyed as determined by the NJDA.

3) When commodities which have a salvage value to the carrier are sold or destroyed, the Contractor must furnish the USDA's Minneapolis ASCS commodity office with a receipt which shows that the commodities was disposed of for an amount less than fifty percent (50%) of the claim value, or with a certificate of condemnation (when a commodities is dumped or destroyed), furnished by the appropriate agency, showing that the commodities was unfit for human consumption.

4.) When a decision is made to refuse a shipment because all or a major portion of it is off-grade, out-of-condition or damaged, all facts contributing to the decision to refuse the shipments shall be reported to the NJDA by telephone. The determination and action necessary to reject a shipment from the USDA delivering carrier will be made by the USDA's FSA Commodity Office, not by the Contractor.

5.) The NJDA's commodity office will consult with the USDA's regional office when guidance in any given case is needed, or if a USDA inspection of the commodities is indicated.

A. Expenses incurred in the recouping of damaged commodities will be reimbursed by the food distribution program, NJDA. Acceptable costs for reimbursement include, hiring workers specifically for the purpose of reworking and re-packing damaged commodities, costs for containers for re-packing and hauling/dumping costs incurred in the disposal of unsalvageable goods.

All USDA commodities, earmarked for dumping, must be approved for destruction and accompanied to the dumping area by and with a NJDA food distribution program field inspector.

B. All instances of damaged commodities connected with incoming shipments must also be reported on USDA Form FNS-57 (9-70), Report of shipment received over, short and/or damaged within ten (10) days following receipt.

Damaged commodities must be reported weekly to the NJDA food distribution office. All damage shall be removed from stock and accumulated so that food distribution field inspection staff, may inspect all USDA commodities damaged to determine the disposition.

C. The Contractor's in-house damaged commodities shall be identified and physically separated from usable commodities. All damaged commodities must be reported to the NJDA food distribution program. All such damages must be identified and stored separate and apart from any shipping damage.

3.1.14 The detailed instructions concerning receipt of USDA foods can be found in FNS (FD) Instructions 709-5 dated 4/1/93. Procedures governing USDA destination inspection of fresh commodities are found in Food Distribution memo's FD-7-022 and FD-7-029 issued by the USDA Mid-Atlantic Regional Office. The Contractor must be able to comply with these instructions.

3.1.15 CHARGES

The commodities received during the first half of any calendar month will be charged, on a lot basis, at the full month rate for storage. Fresh produce commodities received from the USDA and the Department of Defense will be billed on a one-half month rate for each one-half month it remains in storage. Commodities received from the 16th to the last day of the month will be charged one-half month's storage. Beginning with commodities carried over into the next month, storage will be billed at the one-half month rate for each one-half month the commodity remains in storage.

Billing is to be based on gross weight of commodity from the date commodities are received, on a lot basis, including packaging. At the end of the first month, billing will be on a 15-day basis for each 15 days thereafter until the balance is removed.

The handling charges per cwt. (hundred weight) will be limited to inbound freight to the Contractor's warehouse.

Pricing must all inclusive to include (price per cwt., all labor, clerical, fork-lift, pallets, rental, packaging, overtime pay, and any other expenses incurred).

SECTION II – TRUCKING

3.2 GENERAL

A. The United States Department of Agriculture (USDA) is expected to make available to the New Jersey Department of Agriculture (NJDA) various entitlement and bonus food commodities for The Emergency Food Assistance Program (TEFAP). The varieties and quantities of commodities to be shipped are listed in Exhibit #3.

B. This specification does not in any way guarantee what types commodities will be made available, or that NJDA will distribute such commodities in a manner that requires the use of a Contractor's vehicles. The services will be provided as required, on an as needed basis.

The estimated number of loads required is not to be used as the actual number of loads that will require trucking services. These figures provided are for estimated purposes only.

C. If at any time during the contract period donated commodities are provided by the USDA, those commodities will be issued as the NJDA requires. The Contractor will provide these services.

D. All of the commodities are targeted for distribution to "needy individuals" throughout the State of New Jersey and are donated to the State of New Jersey by the United States Department of Agriculture (USDA).

E. The NJDA occasionally receives commercial commodities (private donations) donated for use in TEFAP. The NJDA will assume the cost of storing and transporting these commodities to the EFOs. The Contractor will be required to furnish proper trucking services.

F. For the purposes of this RFP, the State has been divided into Zone A and Zone B. Deliveries to destinations in Zone A and Zone B are to be made from the Contractor's warehouse(s), which may or may not be located in the same zone. Bidders are requested to bid for both Zone A and Zone B, with their warehouse as the point of origin. The delivery points indicated in Exhibit #1 are for informational purposes only, and are subject to change.

Zone A shall consist of the following counties:(Northern Section)

Passaic, Sussex , Bergen Morris, Warren, Essex, Somerset, Hunterdon, Hudson, Union Middlesex

Zone B shall consist of the following counties: (Southern Section)

Mercer, Gloucester, Atlantic, Burlington, Salem, Ocean, Cumberland Camden, Cape May, Monmouth.

G. The quantities, variety and weights of USDA donated food commodities are subject to change at any time. Exhibit#1 and #3 detail the quantities and varieties issued for Calendar Year 2004 (January 1, 2004 to December 31, 2004). Future availability of commodities will be dependent upon continuing legislative authority as directed by the United States Congress, President, and/or USDA.

H. The quantity of donated commodities to be delivered in Zone A and Zone B are detailed in Exhibit #3 . The amounts may vary during the term of the contract, depending upon changes in delivery points. However, the zone will always be as indicated. Deliveries may be required of either full trailers of one item or mixed items or less than truckload (L-T-L) may be required in the same manner.

3.2.1 TRACTOR TRAILER

The Contractor shall provide tractor trailers and drivers as needed for the TEFAP program, to the New Jersey Department of Agriculture (NJDA). All drivers must be licensed and qualified under all State and federal regulations to drive vehicles owned or leased by State of New Jersey trucking companies in intra and interstate commerce.

A. The Contractor will provide all the equipment necessary to expeditiously haul USDA TEFAP commodities in the manner and time frames prescribed herein.

B. The Contractor shall provide clean forty (40) foot and forty-five (45) foot van trailers in good condition. Less than truckload (L-T-L) deliveries may be requested by the NJDA as required.

C. The Contractor will provide as many as six (6) such trailers for pick-up service at sites designated by the NJDA, on any give day, subject to a twenty-four (24) hour notice. At least one trailer must be capable of transporting refrigerated and/or frozen commodities.

D. The Contractor shall provide pick-up service, within one (1) hour of a scheduled time, at loading sites indicated by the NJDA. Pick-up dates and times will be mutually agreed to by the Contractor and the NJDA. The vehicle(s) will be loaded by the NJDA's contracted warehouse personnel.

E. The Contractor is responsible for spotting trailers at the various sites, designated by the NJDA. The loading of the vehicles is pursuant to the request by the NJDA for such spotting service.

F. The Contractor shall provide delivery to the sites indicated in Exhibit #1 within two (2) hours of a scheduled delivery time. The delivery dates and times shall be mutually agreed to by the NJDA, and the Contractor

G. The Contractor will ensure the proper unloading of all product and that they are delivered in good condition.

3.2.2 DELIVERY

A. The Contractor shall be responsible for the transportation of all food commodities transported from the storage facilities and delivered to the following destinations:

B. See Exhibit #1. NOTE: Delivery points and address lists may be changed during the contract period. Additional delivery points may be named or current points dropped.

C. Pick up points will be at NJDA contracted warehouses awarded to the Contractor in Zone A and Zone B of this RFP.

3.2.3 MANIFEST/RECEIPTS

The Contractor will be responsible for checking the quantity, type and condition of all recited commodities against the manifest provided by the contractor's warehouse. When the loading has been completed and the commodities received have been verified, the Carrier representative will legibly sign the manifest. The Carrier will be responsible for retaining a signed copy of the manifest and designated copies of the bills of lading. The Carrier will make certain an authorized representative of the recipient signs his/her name and title to all copies of the bill of lading. The Carrier will leave one (1) copy with recipient and retain the remaining signed copies as

confirmation of delivery. The Carrier will return the original signed copy as confirmation of delivery. The Carrier will return the original signed copy of the bill of lading to the NJDA within ten (10) days after the delivery of a shipment. The payment for services rendered will be made as soon as possible after receipt of bill of lading and the Carrier freight bill.

A. Carriers freight bill must include:

- Reference number
- Units of each item delivered, by name
- Pick-up date
- Delivery date
- Warehouse release number
- Consignee name
- Shipper name
- Weight
- Cost

3.2.4 COUNTS

The Contractor's Carrier is responsible for accuracy of counts and for damage caused by Carrier. Any overage of commodities, after all deliveries are made, is to remain with the Contractor. If there is a shortage or damage, the Contractor will report this immediately to NJDA's food distribution program, on the forms provided. Any amount due to the NJDA as a result of claims for loss of damage of any kind or out-of-condition food must be settled by Contractor's carrier within fifteen (15) days after Carrier receives claim.

3.2.5 DETENTION

The NJDA will not be liable for detention, loading or unloading charges incurred by Contractor.

The Contractors must bid on all weight class asked for in Zone A or in Zone B in order for their bid to be considered.

For estimated quantities and varieties of commodities to be made available, refer to the Exhibits.

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.

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/BID NUMBER: 06X38521.shtml](http://www.state.nj.us/treasury/purchase/bid/summary/BID%20NUMBER%2006X38521.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 three (3) **full, complete and exact copies** of the original. The copies requested are necessary in the evaluation of the bid proposal. 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/BID NUMBER: 06X38521.shtml](http://www.state.nj.us/treasury/purchase/bid/summary/BID%20NUMBER%2006X38521.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/BID NUMBER: 06X38521.shtml](http://www.state.nj.us/treasury/purchase/bid/summary/BID%20NUMBER%2006X38521.shtml).

4.4.2 PROOF OF REGISTRATIONS 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/njbgs 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 located on the Advertised Solicitation, Current Bid Opportunities webpage
[http://www.state.nj.us/treasury/purchase/bid/summary/BID NUMBER: 06X38521.shtml](http://www.state.nj.us/treasury/purchase/bid/summary/BID_NUMBER: 06X38521.shtml)

4.4.2.2 SMALL BUSINESS SET-ASIDE CONTRACTS

Not applicable to this procurement.

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/BID NUMBER: 06X38521.shtml](http://www.state.nj.us/treasury/purchase/bid/summary/BID_NUMBER: 06X38521.shtml).

4.4.3.2 AFFIRMATIVE ACTION

The bidder is required to complete the attached Affirmative Action Employee Information Report, or, in the alternative, supply either a New Jersey Affirmative Action Certificate or evidence that the bidder is operating under a federally approved or sanctioned affirmative action program. The requirement is a precondition to entering into a State contract. The Affirmative Action Forms are located on the Advertised Solicitation, Current Bid Opportunities webpage
[http://www.state.nj.us/treasury/purchase/bid/summary/BID NUMBER: 06X38521.shtml](http://www.state.nj.us/treasury/purchase/bid/summary/BID_NUMBER: 06X38521.shtml).

4.4.3.3 SERVICES SOURCE DISCLOSURE FORM

Pursuant to N.J.S.A. 52:34-13.2, the bidder is required to submit with its bid proposal a completed source disclosure form. [http://www.state.nj.us/treasury/purchase/bid/summary/BID NUMBER: 06X38521.shtml](http://www.state.nj.us/treasury/purchase/bid/summary/BID_NUMBER: 06X38521.shtml). Refer to section 7.2 of this RFP

4.4.4 SUBMITTALS

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/BID NUMBER: 06X38521.shtml](http://www.state.nj.us/treasury/purchase/bid/summary/BID_NUMBER: 06X38521.shtml).

4.4.4.2 SAMPLES/SAMPLE TESTING

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.

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 PRICE SCHEDULE

The bidder must submit its pricing using the format set forth in the State supplied price sheet(s) attached to 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 through issuance of contract.

In order for an award to be made to one primary vendor for both Zones, A and B, all forty-six (46) price lines from the Price Sheet on the Advertised Solicitation, Current Bidding Opportunities webpage, <http://www.state.nj.us/treasury/purchase/bid/summary/06X38521.shtml> must be bid in order to be considered for an award. Failure to bid all price lines shall render a bidders bid proposal non-responsive.

4.5 SUBCONTRACTING FORMS AND RFP LANGUAGE

4.5.1. NOTICE OF INTENT TO SUBCONTRACT FORM

All bidders shall complete the attached Notice of Intent to Subcontract Form <http://www.state.nj.us/treasury/purchase/bid/summary/BID NUMBER: 06x38521.shtml> to advise the State as to whether or not a subcontractor will be utilized to provide any goods or services under the contract. If this is a Small Business Subcontracting set-aside contract, the bidder must comply with the Procedures for Small Business Participation as Subcontractors set forth in <http://www.state.nj.us/treasury/purchase/bid/summary/BID NUMBER: 06x38521.shtml>.

4.5.2 SUBCONTRACTOR UTILIZATION FORM

If the bidder intends to utilize a subcontractor, the Subcontractor Utilization Form [http://www.state.nj.us/treasury/purchase/bid/summary/BID NUMBER: 06x38521.shtml](http://www.state.nj.us/treasury/purchase/bid/summary/BID_NUMBER: 06x38521.shtml) must be completed and submitted with the bid proposal.

4.5.3 SUBCONTRACTOR(S)

- A. **All bidders** must complete the **Notice of Intent to Subcontract Form** whether or not they intend to utilize subcontractors in connection with the work set forth in this RFP. If the bidder intends to utilize subcontractor(s), then the **Subcontractor Utilization Plan** must also be submitted with the bid.
- B. Should the bidder propose to utilize a subcontractor(s) to fulfill any of its obligations, the bidder shall be responsible for the subcontractor's(s): (a) performance; (b) compliance with all of the terms and conditions of the contract; and (c) compliance with the requirements of all applicable laws.
- C. The bidder must provide a detailed description of services to be provided by each subcontractor, referencing the applicable Section or Subsection of this RFP.
- D. The bidder should provide detailed resumes for each subcontractor's management, supervisory and other key personnel that demonstrate knowledge, ability and experience relevant to that part of the work which the subcontractor is designated to perform.
- E. The bidder should provide documented experience to demonstrate that each subcontractor has successfully performed work on contracts of a similar size and scope to the work that the subcontractor is designated to perform in the bidder's proposal.
- F. In addition, primary contractors must provide, on a monthly and cumulative basis, a breakdown in accordance with the budget submitted, of all monies paid to any subcontractor registered as a small business with the New Jersey Commerce and Economic Growth Commission. This breakdown shall be sent to the Purchase Bureau Business Unit, Set-Aside Coordinator.

4.5.4 Contractor Responsibilities

The contractor shall have sole responsibility for the complete effort specified in the contract. Payment will be made only to the contractor. The contractor shall have sole responsibility for all payments due any subcontractor.

The contractor is responsible for the professional quality, technical accuracy and timely completion and submission of all deliverables, services or commodities required to be provided under the contract. The contractor shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in its deliverables and other services. The approval of deliverables furnished under this contract shall not in any way relieve the contractor of responsibility for the technical adequacy of its work. The review, approval, acceptance or payment for any of the services shall not be construed as a waiver of any rights that the State may have arising out of the contractor's performance of this contract.

4.5.5 SUBSTITUTION OR ADDITION OF SUBCONTRACTOR(S)

This Subsection serves to supplement but not to supersede Section 3.11 of the NJ Standard Terms and Conditions of this RFP.

If it becomes necessary for the contractor to substitute a subcontractor, add a subcontractor or substitute its own staff for a subcontractor, the contractor will identify the proposed new subcontractor or staff member(s) and the work to be performed. The contractor is required to provide detailed justification documenting the necessity for the substitution or addition.

The contractor is to provide detailed resumes of its proposed replacement staff or of the proposed subcontractor's management, supervisory and other key personnel that demonstrate knowledge, ability and experience relevant to that part of the work which the subcontractor is to undertake.

The qualifications and experience of the replacement(s) are to equal or exceed those of similar personnel proposed by the contractor in its bid proposal.

The contractor is required to forward a written request to substitute or add a subcontractor or to substitute its own staff for a subcontractor to the State Contract Manager for consideration. If the State Contract Manager approves the request, the State Contract Manager will forward the request to the Director for final approval.

No substituted or additional subcontractors are authorized to begin work until the contractor has received written approval from the Director.

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 located on the Advertised Solicitation, Current Bid Opportunities webpage:

[http://www.state.nj.us/treasury/purchase/bid/summary/BID_NUMBER: 06X38521.shtml](http://www.state.nj.us/treasury/purchase/bid/summary/BID_NUMBER:06X38521.shtml).

In the event of a conflict between the provisions of this RFP, including the Special Contractual Terms and Conditions and the NJ Standard Terms and Conditions, 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 three (3) years. The anticipated "Contract Effective Date" is provided on the signatory page of this RFP:

[http://www.state.nj.us/treasury/purchase/bid/summary/BID_NUMBER: 06X38521.shtml](http://www.state.nj.us/treasury/purchase/bid/summary/BID_NUMBER:06X38521.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 two (2) one-year periods or less, by the mutual written consent of the contractor and the Director. This contract is not expected to exceed five (5) years total, including extensions. : **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 one hundred and twenty days (**120**) 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 ITEMS ORDERED AND DELIVERED

The **Using Agency[ies] is[are]** authorized to order and **the contractor/contractors is/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.

5.6 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.

5.7 MANUFACTURING/PACKAGING REQUIREMENTS

5.7.1 All products must conform in every respect to the standards and regulations established by Federal and New Jersey State laws. <http://www.iarw.org/index.asp>
<http://www.iarw.org/hq/resources/iarw.asp>

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

5.7.3 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.

5.8 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.

5.9 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, located on the Advertised Solicitation, Current Bid Opportunities webpage

<http://www.state.nj.us/treasury/purchase/bid/summary/06X38521.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/CONTRACT AWARD

6.1 CONTRACT EVALUATION

The following criteria will be used to evaluate the bid proposal submitted in response to this RFP. The criteria are not listed in order of importance:

6.1.1 Price

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.

For evaluation purposes, bid proposals will be ranked according to the lowest cost total of four (4) combined bid price lines, which will be documented in a **Model** taken from the price lines in the Price Sheet on the Advertised Solicitation, Current Bidding Opportunities webpage, <http://www.state.nj.us/treasury/purchase/bid/summary/06x38512.shtml>

For the purpose of determining cost, the Purchase Bureau will be utilizing a model identifying four (4) key price lines from the price sheet. The model will be made available at the public bid opening. This information will not be available prior to the public bid opening.

6.2 ORAL PRESENTATION AND/OR CLARIFICATION OF BID PROPOSAL

Prior to contract award and with the exception of scheduling a review of submitted bids, unless requested by the State, contact with the State is limited to status inquiries only and such inquiries are only to be directed to the buyer. Any further contact or information about the proposal with the buyer or any other State official connected with the solicitation will be considered an impermissible supplementation of the bidder's bid proposal.

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.

6.4 NEGOTIATION AND BEST AND FINAL OFFER (BAFO)

Following the opening of bid proposals, the State reserves the right, pursuant to N.J.S.A. 52:34-12(f), to negotiate: the technical services offered, the terms and conditions and/or the price of a proposed contract award with any bidder. In addition, the State reserves the right to seek a Best and Final Offer (BAFO) from one or more bidders. In response to the State's request to negotiate, the bidder must continue to satisfy all mandatory RFP requirements but may improve upon its original technical proposal in any revised technical proposal. However, any revised technical proposal that does not continue to satisfy all mandatory requirements will be rejected as non-responsive and the original technical proposal will be used for any further evaluation purposes, in accordance with the following procedure:

The State will conduct an initial review and determine whether and with which bidder(s) it will negotiate, and will communicate its request to each such bidder. In response, the bidder will submit any required revisions to its proposal.

In response to the State's request for a BAFO, the bidder may submit a revised price proposal that is equal to or lower in price than its original submission, but must continue to satisfy all mandatory requirements.

After receipt of the results of the negotiation and/or the BAFO(s), the Evaluation Committee will complete its evaluation and recommend to the Director for award that responsible bidder(s) whose bid proposal, conforming to this RFP, is most advantageous to the State, price and other factors considered.

All contacts, records of initial evaluations, any correspondence with bidders related to any request for negotiation or BAFO, any revised technical and/or price proposals, the State's evaluation and the Award Recommendation, will remain confidential until an Intent to Award notice is issued.

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 or 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.

7.1.2 SOURCE DISCLOSURE REQUIREMENTS

7.1.2.1 REQUIREMENTS OF N.J.S.A. 52:34-13.2

Under the referenced statute, effective August 3, 2005, all contracts primarily for services awarded by the Director shall be performed within the United States, except when the Director certifies in writing a finding that a required service cannot be provided by a contractor or subcontractor within the United States and the certification is approved by the State Treasurer.

7.1.2.2 SOURCE DISCLOSURE REQUIREMENTS

Pursuant to the statutory requirements, the indended awardee of a contract primarily for services with the State of New Jersey must disclose the location by country where services under the contract, including subcontracted services, will be performed. The Source Disclosure

Certification form located on the Advertised Solicitation, Current Bid Opportunities webpage <http://www.state.nj.us/treasury/purchase/bid/summary/<bid#>.shtml>.

FAILURE TO SUBMIT SOURCING INFORMATION WHEN REQUESTED BY THE STATE SHALL PRECLUDE AWARD OF A CONTRACT TO THE BIDDER.

If any of the services cannot be performed within the United States, the bidder shall state with specificity the reasons why the services cannot be so performed. The Director shall determine whether sufficient justification has been provided by the bidder to form the basis of his certification that the services cannot be performed in the United States and whether to seek the approval of the Treasurer.

7.1.2.3 BREACH OF CONTRACT OF EXECUTIVE ORDER 129

A SHIFT TO PROVISION OF SERVICES OUTSIDE THE UNITED STATES DURING THE TERM OF THE CONTRACT SHALL BE DEEMED A BREACH OF CONTRACT.

If, during the term of the contract, the contractor or subcontractor, who had on contract award declared that services would be performed in the United States, proceeds to shift the performance of any of the services outside the United States, the contractor shall be deemed to be in breach of its contract, which contract shall be subject to termination for cause pursuant to Section 3.5b.1 of the Standard Terms and Conditions of the RFP, unless previously approved by the Director and the Treasurer.

7.2 FINAL CONTRACT AWARD

Contract award[s] shall be made 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 so to do.

An award shall be made to one primary vendor for both Zone A and B. All forty-six (46) price lines must be bid in order to be considered for an award. Failure to bid all price lines shall render a bidders bid proposal non-responsive.

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.