



**RFP # WR-967-38-123022**

**The MOR Consortium**

**2023 – 2024**

**REQUEST FOR PROPOSAL**

**For**

**Processing of USDA Donated Foods and for Provision of  
Commercial Equivalents**

**Proposals Are Due Not Later than 10:00 AM, EST  
Friday, February 3<sup>rd</sup>, 2023**

**Wayne RESA  
33500 Van Born Road  
Wayne, Michigan 48184**



## Bid Summary

**Commodity/Service Being Requested:** Processing of USDA Donated Foods and the provision of Commercial Equivalents

The Macomb ISD, Oakland Schools and Wayne RESA hereinafter known as MOR is a School Food Service consortia in Michigan. These consortia are presently comprised of 117 school districts and other agencies throughout the State of Michigan and qualified for in excess of \$9 million dollars in USDA entitlements. MOR is to be considered one entity for all rebates. All participating member districts will participate in purchases from this contract. Vendors bidding should be aware that the names and number of districts/entities will change yearly on the commodity side of the business as per the Michigan Department of Education's process for Commodity consortium signup. The commercial pricing offered in this bid will be open to any school district or governmental agencies or public entities, whom may join the consortium at any time to take advantage of commercial bid pricing, currently MOR has 171 commercial buying entities. If commercial volume due to membership changes by more than 15% creating a material change the bid will be reissued. As a cooperative effort of all 56 ISD's/RESA's in the state covering each of the State of Michigan's 83 counties and the school districts associated and/or other such governmental agencies or eligible entities, our program does allow for "piggybacking" of this type on commercial pricing to all school districts and or other such governmental agencies or eligible entities in the State of Michigan (2 CFR Part 200.318-.326). Copies of all legal documents will be provided to the Michigan Department of Education.

MOR is committed to providing the best services and resources for its member districts. Part of this philosophy includes purchases from the direct market. The manufacturer's Request for Proposal (RFP) for the 2023-2024 school year is for food-processed items as well as their commercial equivalents but does not include products that are offered strictly as commercial products.

MOR will have a separate management services, drayage, storage and distribution contract with Van Eerden Foodservice Company of Grand Rapids, Michigan. Van Eerden Foodservice Company will be the distributor for all products solicited in this Manufacturer's RFP. Van Eerden Foodservice Company, with the assistance of the MOR Executive Directors, will act as MOR's agents to solicit and negotiate final pricing and proposals.

Submission of bid documents, specifically the "**Proposal Response Form**," constitutes agreement and compliance with the terms and conditions listed in this Request for Proposal and with your USDA National Processing Agreement becomes the contract when awards are made by the MOR Executive Boards. The Michigan Department of Education is also requesting a letter with your bid stating, if your company receives an award, your company will honor the award.

**Type of Resulting Contract:** Statewide Cooperative Contract

As a result of this RFP, MOR will extend the contract to other school districts and eligible entities statewide. School districts and other eligible entities will have access to a list of approved products. The list of approved companies and products may differ by cooperative. The vendors will be competitively selected as having been qualified as defined within the RFP. This contract will enable school districts and other eligible entities to "piggyback" and purchase on an "as needed" basis from the pool of vendors awarded by this competitively awarded contract.



**Resulting Contract Term:** One year with four (4) one-year renewal options.

**TIMETABLE**

Release of RFP:	December 12, 2022
Question & Answer Due Date:	December 23, 2022
Questions and Answers Responses Posted:	January 6, 2023
Proposals Due by (10:00 am/ EST) *:	February 3, 2023
Evaluation/Clarifications/Negotiations:	February 2023
Notice to Award:	March 2023
Master Agreement Award Date:	March 2023
New Bid Year Begins	July 1, 2023

\*Any response received later than the specified deadline will be disqualified.

**Contacts with MOR Personnel:** All contact regarding this RFP or any matter relating thereto must be sent in e-mail as follows:

**Email address:** [wolford@macservcorp.com](mailto:wolford@macservcorp.com)

Should your company receive a bid award, MDE now requires a letter from manufacturers accepting our award. A prototype acceptance letter will be found in the RFP documents and is due with your bid documents.

**Submission Instructions:**

All forms requiring original signatures shall be mailed or delivered to the MOR office. The MOR office located at 33500 Van Born Rd, Wayne, Michigan 48184 will accept sealed proposals in answer to this RFP until 10:00 a.m., Eastern Standard Time, Friday, February 3rd, 2023. Late responses will NOT be opened or evaluated.

All price proposals (Excel Spreadsheet - bid sheet, Instructions and Technical response form & Nutrition Documentation) to be emailed to [morcooperative@gmail.com](mailto:morcooperative@gmail.com). Please identify your company on the SUBJECT line of your email. Proposals successfully submitted will generate an email confirming successful receipt. MOR will not have access to the protected email address until after the closing date and time. After the closing date and time, the Executive Director of MOR will open and record bids.



**Request for proposal package contains:**

- Invitation from MOR to Manufacturers and Brokers
- Food Proposal Time Line
- Request for Proposal with Submittal Instructions
- Proposal Instructions, Contract Terms and Conditions
- Excel File for Product Information with Price Proposal Column and Manufacturer's Technical Response Form (These excel forms must be returned electronically)
- Submit Nutritional Information and Product Labels Supporting Products Being Bid in electronic format (Do not include paper copies of nutritional information).

**Numbered pages below may not be transmitted electronically. Original signatures are required**

1. Proposal Response Form
2. Food Destination Form with Zip Code Plus 4 (return one for each food bid)
3. Manufacturer Authorization for Broker Representative Signature (if applicable)
4. A Letter Stating Your Company Will Honor Your Bid if You Receive an Award
5. Certificate of Compliance Iran Economic Sanctions Act
6. Check List of Bidder's Responses to RFP
7. Certificate of Independent Price Determination
8. Non-Collusion, Debarment, Lobbying and Clean Air and Water Affidavits
9. Ethical Standards Affidavit
10. Conflict of Interest Affidavit
11. A Sample Copy of Your "Monthly Performance Report"
12. 2023-2024 SEPDS for All Products Being Bid

MOR reserve the right to select vendors yielding best value and in the best interest of their consortia. MOR intends to competitively negotiate and award the contract all or in part based on the evaluation factors of: price, incentives, food processing factors, delivery conditions, point of sale and promotional materials and completeness of the proposal. When evaluations are scored, there is typically a logical separation between the most highly ranked proposals and all other proposals in terms of raw evaluation points. MOR will negotiate with no more than three top bidders by category, and in the event of fewer highly rated proposals, may negotiate with less than three. MOR also reserves the right to award entire product categories or groups to a single supplier if it is in the consortia's best interests to meet minimum load requirements and to reduce freight costs.

In fairness to all bidders, all questions must be submitted by e-mail only to Charles Wolford at [wolford@macservcorp.com](mailto:wolford@macservcorp.com)



**PROPOSAL RESPONSE FORM**

Contract Period: July 1, 2023 - June 30, 2024

Company FOB origin physical address:

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Company Name	Address	City, State	Zip code
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VENDOR INFORMATION:

Contact Name: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_ Email: \_\_\_\_\_

Address: \_\_\_\_\_ Street or PO Box #  
 \_\_\_\_\_ City

State \_\_\_\_\_ Zip Code \_\_\_\_\_

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Your Proposal or Reference Number (if applicable): \_\_\_\_\_

The undersigned is an authorized company officer to propose and bind the company, and furthermore agrees to furnish and deliver the goods or services in accordance with the terms, conditions, specifications and prices herein quoted, and to pay promotional allowances, incentives and rebates as guaranteed if awarded a contract.

Proposal Approved By: \_\_\_\_\_

(SIGNATURE)

(TYPEWRITTEN OR PRINTED NAME)

Title/Position: \_\_\_\_\_

**PROPOSAL RESPONSE FORM** is not acceptable unless signed by a manufacturer's firm member or an authorized manufacturer's agent. Signature authority may be delegated by a manufacturer to a manufacturer's agent in a letter (sample provided) from the manufacturer substantiating this authority. The manufacturer should mail this letter in sufficient time for receipt by MOR by February 3, 2023, 10:00 a.m., EST.



OMB APPROVED NO. 0584-0293  
Expiration Date: 11/30/2019

<b>U.S. DEPARTMENT OF AGRICULTURE - FOOD AND NUTRITION SERVICE</b> <b>DESTINATION DATA FOR DELIVERY OF DONATED FOODS</b> FNS Instruction 709-5 <b>SEE INSTRUCTIONS ON REVERSE</b>	<b>TYPE OF ACTION</b> <input type="checkbox"/> NEW SHIP-TO <input type="checkbox"/> CHANGE / UPDATE <input type="checkbox"/> NEW HQ RECEIVER <input type="checkbox"/> INACTIVATE
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Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: U.S. Department of Agriculture, Food and Nutrition Services, Office of Policy Support (0584-0293), Alexandria, VA 22302. Do not return the completed form to this address.

**SECTION A: SHIP-TO**

1. COMPANY NAME	2. STREET ADDRESS (Number, Name)	3. CITY	4. STATE	5. ZIP CODE
6. BUSINESS PARTNER ID (Existing Business Partners)	7. CONTACT EMAIL (optional)  PRIMARY:  ALTERNATE:	8. CONTACT NUMBERS (delivery)		9. CARE OF/DBA NAME (if applicable)
		PRIMARY	ALTERNATE	
		PHONE:		
		FAX:		10. SDA BP ID (Map To)

11. <input type="checkbox"/> ADD TO HQ RECEIVER	12. <input type="checkbox"/> REMOVE RELATIONSHIP (SDA use only)
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13. SHIP BY (Shipment may be made by rail or truck unless one of the following is checked)  <input type="checkbox"/> RAIL ONLY <input type="checkbox"/> TRUCK ONLY	EXPLANATION OF NEED FOR THE RESTRICTION SHOWN
	LIMITATIONS

**SECTION B: NEW HQ RECEIVER**

14. COMPANY NAME	15. STREET ADDRESS (Number, Name)	16. CITY	17. STATE	18. ZIP CODE
19. <input type="checkbox"/> ADD HQ RECEIVER WBSCM USER (COMPLETE 20-22)	20. NAME (First, Last)	21. EMAIL	22. PHONE	

**23. DELIVERY LOCATIONS (if applicable)**

BP ID (List existing Ship-To that will be mapped to this HQ Receiver)	NEW SHIP-TO
	Attach a list of new Ship-To to this form. (Include Street Address, City, State, Zip Code)

**SECTION C: TYPE OF WAREHOUSE (OPTIONAL SECTION 24-28)**

24A. TYPE OF WAREHOUSE <input type="checkbox"/> STATE OWNED AND OPERATED <input type="checkbox"/> COMMERCIAL	25. TYPE OF PROCESSOR <input type="checkbox"/> SINGLE PROCESSOR <input type="checkbox"/> NATIONAL PROCESSOR <input type="checkbox"/> OTHER	26. RELATIONSHIP TO NATIONAL WAREHOUSE <input type="checkbox"/> NATIONAL WAREHOUSE RECEIVING LOCATION
24B. IF COMMERCIAL WAREHOUSE DELIVERY ACCEPTABLE BY <input type="checkbox"/> TRANSFER OF TITLE <input type="checkbox"/> LOCAL PICKUP		
27. TYPE(S) OF STORAGE PROVIDED <input type="checkbox"/> DRY <input type="checkbox"/> REFRIGERATED <input type="checkbox"/> FREEZER	28. HANDLING OF PERISHABLE FOODS (Check one) <input type="checkbox"/> SHIPMENT ALWAYS ENTIRELY UNLOADED AND PLACED IN STORAGE <input type="checkbox"/> PART OF SHIPMENT ALWAYS OR SOMETIMES DISTRIBUTED FROM CAR OR WAREHOUSE PLATFORM	

**The above information is true and correct to the best of my knowledge and belief.**

29. DATE	30. SIGNATURE OF BUSINESS PARTNER REPRESENTATIVE
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EMAIL a copy to [WBSCM-Ship-To@fns.usda.gov](mailto:WBSCM-Ship-To@fns.usda.gov)





## INSTRUCTIONS

It is important that a separate form be prepared for each destination when delivery conditions require changes in Section A: Ship-To.

In the "Type of Action" entry, check one box only indicating whether the form is to provide data for:

- (1) A NEW SHIP-TO destination: This can be a request for a delivery location to be created or a request for a delivery location to be linked/mapped to a State Distributing Agency (SDA)
- (2) A New HQ Receiver: HQ Receivers are a physical grouping of Ship-To organizations. One HQ can have oversight of multiple Ship-To organizations.
- (3) Notification of CHANGE/UPDATE in data for an existing Ship-To. This can be a physical change to the information or to request removal of a Ship-To to SDA relationship.
- (4) INACTIVATE of a Ship-To destination

Section A: Use to provide information for New Ship-To, Ship-To Change/Update or Ship-To Inactivation.

Section B: Use to provide information for a New HQ Receiver

Section C: Use to provide additional Ship-To information

### ITEM

- 1 2,3,4, and 5 are Self-explanatory.
- 6 Provide the Business Partner ID (BP ID) for Ship-To Changes/Updates and Inactivation (*i.e.* 500XXXX)
- 7 Provide a contact email for the delivery location to be contacted for delivery questions/issues.
- 8 Provide a valid delivery contact phone number and/or fax to schedule deliveries. A contact phone number is required.
- 9 If the delivery location holds the business name of another entity and this location will receive shipments under a different name, add the name of the receiving organization and specify if it is a DBA or Careof.
- 10 If applicable, provide the SDA BP ID to have the Ship-To location mapped to the requested SDA (*i.e.* 400XXXX)
- 11 Check this box if the Ship-To must be added to an HQ Receiver (Processors only) found in Section B
- 12 Check this box if a Ship-To should be removed from an SDA.

- 13 Check one of the boxes to restrict transportation options.

For Rail Delivery - No entry is to be made unless delivery to a specific location is essential to program operations; e.g., the receiving warehouse is located on a rail siding. When an entry is necessary, the address

shown shall include the specific location at which the car is to be placed for unloading. When reciprocal switching is not in effect at the point of delivery, the name of the railroad which serves this location shall be shown. For example: "Blank's Warehouse, ACL," or "Industrial siding, PPP." Where reciprocal switching is in effect at the point of delivery, no delivering carrier shall be specified. If delivery is to be made on a team track, the name of a specific team track shall not be shown unless it is essential to program requirements.

For Truck Delivery - Show exact street address for location at which delivery will be accepted. If same as for "Rail Delivery," enter "Same as for rail delivery."

Limitations: Show limiting conditions, if any, at the destination point; e.g., "Cannot handle care over maximum length of 53 feet."

Restrictions: It is desirable that shippers be allowed to make shipment by either rail or truck so that the means of transportation can be selected which will result in least transportation costs. Distributing agencies may restrict the method of shipment only when necessary to their program operations. If a specific mode of transportation is shown, an explanation must be made of the need for the restriction.

- 14 15, 16, 17, and 18 are Self-explanatory.
- 19 Check this box to add a WBSCM User for the HQ Receiver.
- 20 21 and 22. Provide the user's information who will access WBSCM on behalf of the HQ Receiver.
- 23 List Ship-To that will be added to the HQ Receiver.
- 24 25, 26, 27 and 28 Self-explanatory.
- 29 and 30. Receiving organization or Distributing Agency's representative will complete these sections.



**MANUFACTURER AUTHORIZATION  
FOR BROKER TO ACT AS THE MANUFACTURER'S REPRESENTATIVE  
WITH FULL SIGNATURE AUTHORITY**

Date: \_\_\_\_\_

By my signature below, I certify I am authorized to delegate signature authority for the  
Manufacturer's Representative \_\_\_\_\_

(Name of company and specific individual authorized to sign) for the express purpose of  
Negotiating Direct to Manufacturer contracts between \_\_\_\_\_

(Name of Manufacturing company) and MOR Consortia, for the contract year 2023-2024.

Name \_\_\_\_\_ (typed)

Name \_\_\_\_\_ (signed)

Title \_\_\_\_\_

Phone \_\_\_\_\_

Email \_\_\_\_\_





**SAMPLE - type on company letterhead and submit an original signed copy**

**MANUFACTURER ACCEPTANCE OF BID AWARD**

Date: \_\_\_\_\_

By my signature below, I certify I am authorized to accept a bid award from the MOR Consortia and that our company will honor such an award for the extent of the bid period. Further, we understand that while an award has been made and our company has been added to the annual surveys of the MOR Consortia, the memberships may not have allocated enough product on the respective surveys for a diversion of USDA food to us.

Manufacturer \_\_\_\_\_

Name \_\_\_\_\_ (typed)

Name \_\_\_\_\_ (signed)

Title \_\_\_\_\_

Phone \_\_\_\_\_

Email \_\_\_\_\_



Certificate of Compliance  
Michigan Public Act No. 517 of 2012  
Iran Economic Sanctions Act

The undersigned, the owner, or authorized officer of the below-named company (the “Company”), pursuant to the compliance certification requirement provided in the MOR cooperative request for proposal (the “RFP”) hereby certifies, represents, and warrants that the company (which includes its officers, directors and employees) is not “Iran Linked Business” within the meaning of the Iran Economic Sanctions Act, Michigan Public act No. 517 of 2012 (the “Act”), and that in the event the company is awarded a contract by MOR cooperative as a result of the aforementioned RFP, the company is not and will not become an “Iran Linked Business” at any time during the course of performing any services under the contract.

The Company further acknowledges that any person who is found submitted a false certification is responsible for a civil penalty not more than \$250,000 or two (2) times the amount of the contract the proposed contract for which the false certification was made, whichever is greater, the cost of the MOR cooperative’s investigation, and the reasonable attorney fees, in addition to the fine. Moreover, any person who submitted a false certification shall be ineligible to bid on a request for proposal for three (3) years from the date it was determined that the person has submitted the false certification.

\_\_\_\_\_  
Name of Company

\_\_\_\_\_  
Name and Title of Authorized Representative

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



**CERTIFICATE OF INDEPENDENT  
PRICE DETERMINATION**

**(A) By submission of this offer, the offeror certifies each party thereto certifies as to its own organization, that in connection with this procurement:**

- (1) The prices in this offer have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting completion, as to any matter relating to such prices with any other offeror or with any competitor;
- (2) Unless otherwise required by law, the prices which have been quoted in this offer have not been knowingly disclosed by the offeror and will not knowingly be disclosed by the offeror prior to bid opening in the case of an advertised procurement or prior to award in the case of a negotiated procurement, directly or indirectly to any other offeror or to any competitor; and
- (3) No attempt has been made or will be made by the offeror to induce any person or firm to submit or not to submit, an offer for the purpose of restricting competition.

**(B) Each person signing this offer on behalf of the manufacturer or processor certifies that:**

- (1) He or she is the person in the offeror’s organization responsible within the organization for the decision as to the prices being offered herein and has not participated, and will not participate, in any action contrary to (A)(1) through (A)(3) above; or
- (2) He or she is not the person in other offeror’s organization responsible within the organization for the decision as to the prices being offered herein, but that he or she has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated and will not participate, in any action contrary to (A)(1) through (A)(3) above, and as their agent does hereby so certify; and he or she has not participated, and will not participate, in any action contrary to (A)(1) through (A)(3) above.

To the best of my knowledge, this manufacturer or processor, its affiliates, subsidiaries, officers, directors, and employees are not currently under investigation by any governmental agency and have not in the last three years been convicted or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to bidding on any public contract, except as follows:

\_\_\_\_\_  
Signature of Company Representative                      Title                      Date                      \_\_\_\_\_  
Company’s Authorized Representative

**In accepting this offer, MOR certifies that no representative of MOR has taken any action which may have jeopardized the independence of the offer referred to above.**

\_\_\_\_\_  
Signature of the MOR Executive Director                      Title                      \_\_\_\_\_  
Date



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**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,  
INELIGIBILITY,  
AND VOLUNTARY EXCLUSION – LOWER TIER COVERED  
TRANSACTIONS**

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This certification is required by the regulations implementing Executive Order 12549, Executive Order 12689, and 31 U.S.C. 6101; Debarment and Suspension, 7 CFR Part 3017, Subpart C, Responsibilities of Participants Regarding Transactions.

**(Please read instructions on next page before completing Certification.)**

The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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Organization Name  
Name

Award Number or Project

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Name(s) and Titles(s) of Authorized Representatives(s)

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Signature(s)

Date



## **INSTRUCTIONS FOR CERTIFICATION**

1. By signing and submitting this form, the prospective lower tier participant is providing the certification set out on the reverse side in accordance with these instructions.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction,” “debarred,” “suspended,” “ineligible,” “lower tier covered transaction,” “participant,” “person,” “primary covered transaction,” “principal,” “proposal,” and “voluntarily excluded,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this form that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – Lower Tier Covered Transactions,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Excluded Parties List System (EPLS) at <http://epls.arnet.gov/>.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies as appropriate, including suspension and/or debarment.



## CLEAN AIR AND WATER CERTIFICATE

Applicable if the contract exceeds \$100,000 or the Contracting Officer has determined that the orders under an indefinite quantity contract in any one year will exceed \$100,000 or a facility to be used has been the subject of a conviction under the Clean Air Act (41 U.S.C. 1857c-8(c) (1) or the Federal Water Pollution Control Act 33 1319(d) and is listed by EPA or the contract is not otherwise exempt. The MOR Consortium and manufacturer or processor (offeror) shall execute this Certificate.

\_\_\_\_\_  
Name of Manufacturer or processor

\_\_\_\_\_  
Charles Wolford, (e signature)  
acting for MOR Cooperative

**THE MANUFACTURER OR PROCESSOR AGREES AS FOLLOWS:**

To comply with all the requirements of Section 114 of the Clean Air Act, as amended (41 U.S.C. 1857, et seq., as amended by Public Law 91-604) and Section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251, et seq., as amended by Public Law 92-500), respectively, relating to inspection, monitoring, entry, reports, and information as well as other requirements specified in Section 114 and Section 308 of the Clean Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the award of this contract.

That no portion of the work required by this prime contract will be performed in a facility listed on the Environmental Protection Agency (EPA) List of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of such facility or facilities from such listing.

To use his/her best efforts to comply with clean air standards and clean water standards at the facilities in which the contract is being performed.

To insert the substance of the provisions of this clause in any nonexempt subcontract, including this paragraph.

**THE TERMS IN THIS CLAUSE HAVE THE FOLLOWING MEANINGS:**

The term "Air Act" means the Clean Air Act, as amended (41 U.S.C. 1957 et seq., as amended by Public Law 91-604).

The term "Water Act" means Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Public Law 92-500).

The term "Clean Air Standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in section 110(d) of the Clean Air Act (42 U.S.C. 1957c-5(d)), an approved implementation procedure or plan under Section 111(c) or Section 111(d), respectively, of the Air Act (42 U.S.C. 1857c-6(c) or (d)), or approved implementation procedure under Section 112(d) of the Air Act (42 U.S.C. 1857c-7(d)).

The term "Clean Air Standards" means any enforceable limitation, control, condition, prohibition, standard, or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by Section 402 of the Water Act (33 U.S.C. 1342) or by local government to ensure compliance with pretreatment regulations as required by Section 307 of the Water Act (33 U.S.C. 1317).

The term "Compliance" means compliance with clean air or water standards. Compliance shall also mean compliance with a schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency or an Air or Water Pollution Control Agency in accordance with the requirements of the Air Act or Water Act and regulations issued pursuant thereto.

The term "facility" means any building, plant, installation, structure, mine, vessel, or other floating craft, location or sites of operations, owned, leased, or supervised by the Manufacturer or processor.

\_\_\_\_\_  
Signature of Manufacturer or Processor  
Company's Authorized Representative

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



## NOTICE TO APPLICANTS – CERTIFICATION/DISCLOSURE REQUIREMENTS RELATED TO LOBBYING

Section 319 of Public Law 101-121 (31 U.S.C.), signed into law on October 23, 1989, and imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. Certain provisions of the law also apply to Federal commitments for loan guarantees and insurance; however, it provides exemptions for Indian tribes and tribal organizations.

Effective December 23, 1989, current and prospective recipients (and their subtier contractors and/or subgrantees) will be prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress and any Federal agency in connection with the award of a particular contract, grant, cooperative agreement, or loan. In addition, for each award action in excess of \$100,000 (or \$150,000 for loans) on or after December 23, 1989, the law requires recipients and their subtier contractors and/or subgrantees to: (1) certify that they have neither used nor will use any appropriated funds for payment to lobbyists; (2) disclose the name, address, payment details, and purpose of any agreements with lobbyists whom recipients or their subtier contractors or subgrantees will pay with profits or **nonappropriated** funds on or after December 23, 1989; and (3) file quarterly updates about the use of lobbyists if material changes occur in their use. The law establishes civil penalties for noncompliance.

If you are a current recipient of funding or have an application, proposal, or bid pending as of December 23, 1989, the law will have the following immediate consequences for you:

- You are prohibited from using appropriated funds (other than profits from Federal contracts) on or after December 23, 1989, for lobbying Congress and any Federal agency in connection with a particular contract, grant, cooperative agreement or loan;
- You are required to execute the attached certification at the time of submission of an application or before any action in excess of \$100,000 is awarded; and
- You will be required to complete the lobbying disclosure form if the disclosure requirements apply to you.

Regulations implementing Section 319 of Public Law 101-121 have been published as an Interim Final Rule by the Office of Management and Budget as Part III of the February 26, 1990, **Federal Register** (pages 6736-6746).





**CERTIFICATION REGARDING LOBBYING  
CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS**

**The undersigned certifies, to the best of his or her knowledge and belief, that:**

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of any Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement;

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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Organization Name Award Number or Project Name

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Name and Title of Authorized Representative

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Signature Date



**ETHICAL STANDARDS AFFIDAVIT**

Contractor, after being first duly sworn, affirms that by its employment policy, standards and practices it does not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age or sex and that it is not in violation of and will not violate any applicable laws concerning the employment of individuals with disabilities.

Contractor understands that it shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therefore.

Contractor also understands that it shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award or a subcontract or order.

Contractor also understands that it shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a metropolitan government contract upon the agreement or understanding for a contingent commission, percentage or brokerage fee, except for the retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

Contractor represents that it has not retained anyone in violation of the foregoing.

Contractor also understands that a breach of ethical standards could result in civil or criminal sanctions and/or debarment or suspension from being a seller, contractor or subcontractor under metropolitan government contracts.

Print name of bidder: \_\_\_\_\_ Signature: \_\_\_\_\_

Name of Company: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_

Sworn to and subscribed before me, a notary public in and for the above state and county, on this \_\_\_\_\_ Day of \_\_\_\_\_, 20\_\_\_\_\_.

Notary Public \_\_\_\_\_

My commission expires: \_\_\_\_\_

Seal



**CONFLICT OF INTEREST AFFIDAVIT**

This affidavit is required by state law and complies with the State of Michigan, Act No. 232 of Public Acts of 2004, Enrolled House Bill No. 5376, Sec. 1267, paragraph 3, and sub-paragraph (d), as listed below:

- (3) The advertisement for bids (and proposals) shall do all of the following:  
 State that the bid shall be accompanied by a sworn and notarized statement disclosing any familial relationship that exists between the owner or any employee of the bidder and any member of the board, intermediate school board, or board of directors or the superintendent of the school district, intermediate superintendent of the intermediate school district, or chief executive of the public school academy. A board, intermediate school board, or board of directors shall not accept a bid that does not include this sworn and notarized disclosure statement.

**CHECK ONE OF THE TWO BOXES BELOW.**

List and describe all existing Conflicts of Interest. (*Attach an additional page if necessary.*)

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To the best of my knowledge, no conflict of interest exists.

Print name of bidder: \_\_\_\_\_ Signature: \_\_\_\_\_  
 Name of Company: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_

\*\*\*\*\*  
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**NOTARY:** State of \_\_\_\_\_ County of \_\_\_\_\_

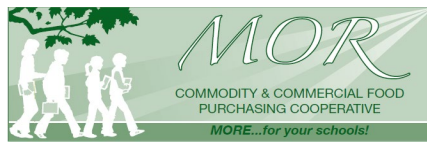
Sworn to and subscribed before me, a notary public in and for the above state and county, on this

\_\_\_\_\_ Day of \_\_\_\_\_, 20\_\_ .

Notary Public \_\_\_\_\_

My commission expires: \_\_\_\_\_

Seal



## **YOU MUST INCLUDE A COPY OF YOUR MONTHLY PERFORMANCE REPORT**

This report must be filed each month with the Michigan Department of Education, MOR Executive Directors, Van Eerden Foodservice Company.

Failure to comply with this request will be considered an infraction of the awarded contract. Past compliance with this provision will become part of the evaluation matrix.

Copies of acceptable report formats can be found on the ACDA web site [www.commodityfoods.org](http://www.commodityfoods.org)

## **INSTRUCTIONS FOR SUBMITTING PRICES**

The Excel Spreadsheet that has been emailed with this Request for Proposal has areas for entering your commodity price, the food value pass thru and the price of your commercial equivalent food product. The Excel Spreadsheet is an integral part of this Request for Proposal.

- Please submit price proposals to designated email address.
- Download Excel Spreadsheet files; add your prices; save and send as an attachment.
- Please provide pricing for your approved commodity products and the commercial equivalents.
- Only the provided format will be accepted.
- Please do not change the format of the spreadsheet.

## **Submitting Bid Prices**

### **IF YOU QUOTE A BILLBACK ALLOWANCE**

The price from which the billback is to be subtracted must be provided or your proposal may be considered non-responsive. If you fail to provide base pricing from which to subtract the billback, your technical response will be marked down.

### **REBATE/ALLOWANCE COLLECTION**

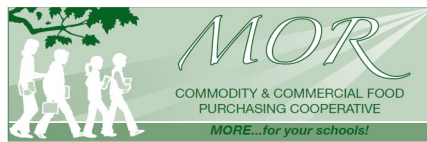
MOR's agents, Van Eerden Foodservice Company, will file promotional allowance claim requests with manufacturers. Payment to MOR or Van Eerden Foodservice Company is expected within 45 days or less after filing a claim. Van Eerden Foodservice Company will remit payment to individual districts based on their proportionate share of purchases. All payments will be returned to each individual districts nonprofit food service account. Van Eerden Foodservice Company will not be qualified for the promotional allowances and incentives offered in this Proposal and warrants and guarantees they will NOT retain any payments made on behalf of MOR. Promotional allowances and volume incentives, if offered, will be an award criteria considered in pricing proposals. All promotional allowances and volume incentives offered to MOR shall be quoted on the Manufacturer's Technical Response Form for each product being bid.

### **Quote prices for each item separately**

In the event that the unit designation stated on the price proposal form is different from the standard package offered, or the portion size requested, the Bidder shall convert the quantities to conform to the unit set forth in the specifications. Failure to make the conversion may be cause for rejection of the proposal. If decimals are used for pricing, decimals shall not exceed 4 decimal places.

### **Delivered pricing**

Quoted prices that shall include drayage, freight, packing and insurance at the manufacturer's expense on all items delivered to MOR designated facility. All items delivered under this pricing option shall be delivered to Van Eerden



Foodservice Company, Grand Rapids, Michigan, or designated alternate locations. Van Eerden Foodservice Company may request F.O.B. when considered appropriate by either during contract negotiations.

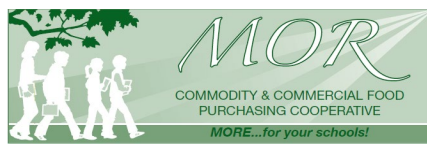
#### **ACCEPTABLE VALUE-PASS-THRU METHODS**

Under the terms and conditions of this RFP, all manufacturers, vendors, brokers and suppliers agree to utilize one of the three methods of value-pass-thru authorized by MOR: Fee for Service (FFS), Modified Fee for Service and Net-Off-Invoice (NOI). MOR do not utilize either E-Rebates or Mail-in-Rebates and entities who bid on this RFP agree to abide by this request. E Rebates and Mail-in-Rebates are difficult to track and unduly complicate MOR recordkeeping and USDA required food usage reporting.

#### **Administrative/Remittance Fee**

The MOR coop is requiring all manufacturers to provide an administrative fee.

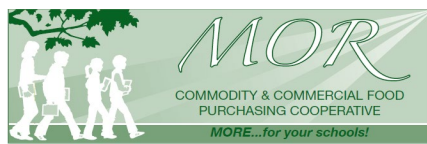
The Manufacturer/Vendor must remit an administrative fee of \$0.32 on all cases transacted under this contract and remit the fee within 30 days after the end of each quarter. The fee for this contract will be \$0.32 on all cases through the use of this contract.



## CONTRACT TERMS AND CONDITIONS:

All manufacturers and/or processors wishing to process USDA commodities for MOR members must have a National Processing Agreement (NPA) or a Master Contract on file with the State of Michigan, Michigan Department of Education, Office of Health and Nutrition Services. The State of Michigan has adopted the American Food Distribution Association's (ACDA) prototype contract as the model bidders must meet. The NPA and/or Master Contract prototype along with certifications and documents required with a manufacturer's or processor's BID will constitute a valid contract with MOR. Awards will be made in February and confirmed by MOR executive directors in March.

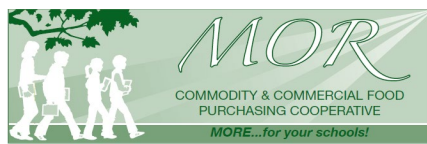
1. **Contract Period:** The contract will be from July 1, 2023 through June 30, 2024. With the option for additional four (4) one-year contracts if agreeable by both parties.
2. **Extension:** MOR reserves the right to extend the contract for 90-days past its term to continue a source or sources of supply until new or replacement Bidders have been identified and contracts awarded. Any contract extension/renewal is contingent upon the approval of the Bidder(s).
3. **Acceptance of Conditions:** Each Bidder, by submitting a proposal, assents to each and every term and condition set forth anywhere in this Request for Proposal and agrees to be bound thereby. A failure to become knowledgeable, to read materials provided or to obtain clarification about contract terms and conditions prior to submitting a proposal, does not warrant release from contract acceptance.
4. **Format of Proposal:** Bidders are expected to submit bids that are accurate for products. Proposals shall be complete and contain all terms a Bidder believes necessary. If after submitting a Proposal, a Bidder finds changes are necessary, the bidder may change or withdraw their proposal at any time up to the time of the proposal opening. After the opening, the Proposal may not be withdrawn or changed except during the process of competitive negotiations. Once negotiations are complete and terms accepted, the proposal and the complete agreement constitute a binding contract, and the Bidder is expected to honor all agreed upon contractual terms. Submittals are required in a specified format. Facsimile transmissions will not be accepted for price quotations or for documents requiring original signatures.
5. **Signatures:** All sheets requiring a signature shall be signed with ink, as follows:
  - a. In the case of an individual Bidder, by such individual Bidder,
  - b. In the case of a Partnership, the name of the partnership must appear on such proposal and shall be signed in the name of such partnership by at least one partner or an authorized broker when an original signed letter authorizing a broker to sign for the corporation is on file.
  - c. In the case of a corporation, the corporate name shall be subscribed by the president, a managing officer, or an authorized broker (when an original signed letter authorizing a broker to sign for the corporation is on file). There shall be set forth under the signature of such officer the name of the office he holds or the capacity in which he acts for such corporation.
6. **Proposal Opening:** Proposal opening will be open to the public. The opening will serve only to open and acknowledge each Proposal. Price comparisons will not be available until competitive negotiations have been completed and all bids have been submitted to the other consortiums in Michigan. All materials submitted in response to this Request for Proposal must have been received in the form designated by 10:00 a.m. EST, February 3, 2023 at which time the lock box will be opened and prices placed in an audit format. No award will



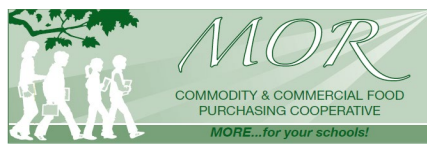
be made or implied at the proposal opening. Proposals will be evaluated after proposal opening and contracts will be awarded based on award criteria.

7. **Initial Orders:** Initial orders will be submitted to successful Bidder on a time line established by Van Eerden Foodservice Company for delivery in July or August 2023 at contract pricing.
8. **Specifications / Approved Brands for Equality:** It is the intent of MOR to afford maximum competition and equal opportunity to any and all potential Bidders we have changed our process for giving specifications. Due to the ever-changing product mix in schools because of ever changing USDA nutrition standard requirements, we are asking all vendors to fill out our “bid sheet form” with all of the pertinent information including pricing for all products that have been approved for commodity processing that are commonly used in schools. We have found that due to product reformulations based on regulation changes that our specifications are actually causing a system of limited competition. Our groups have decided, that we will be evaluating products in each product category that meet the needs of individual districts and will be awarding based on the criteria listed later in this document.
9. **Product Detail: Provide as much detail as possible with the specification/pricing document and the EPDS of SEPDS to assist in evaluating your product:** State Brand, Pack and Unit Size, Product Number or Universal Product Codes if used as the Vendor Product Number, Unit Price, Price per Serving; Number of Servings per Case, USDA Donated Foods Product Numbers required to produce each product and, the number of finished pounds, servings and percent yield produced from a truckload of the required USDA donated food(s). Errors in correctly quoting pack, size, price, etc. shall not relieve a vendor from the responsibility to provide product at the offered unit cost.
10. **Fiscal Year Funding:** Circumstances beyond the control of MOR may have an unexpected impact on projected volume. In the event of the discontinuance or a decrease in federal and/or state funds, MOR reserves the right to change the item identifications, increase or decrease the quantities, and/or delete items.
11. **Estimated Purchase Quantities:** This Request for Proposal seeks proposals to meet the product requirements of MOR Member Districts and does not Guarantee a specified purchase volume.
12. **Prices, Size, and Pack Variances:** Quote each item separately by offering the standard unit price on the Excel “Bid Sheet Form” in the format designated. **IMPORTANT:** To qualify as a valid bid, ALL commercial and USDA Food price information must be completed as shown on the “bid sheet form” including unit pricing. USDA Food must be quoted using the November 15 price file even if your company’s SEPDS are still showing previous year’s USDA Food price.
13. **Fixed Firm pricing/Market Emergency:** MOR fixed pricing for the term of the contract. It is understood that, with market emergencies, pricing for a twelve-month period may not be realistic. In the event of an uncustomary increase or decrease in the market price of any item or items covered by the contract, MOR will consider negotiated price adjustments (increases or decreases), commensurate with ingredient price changes when substantiated by independent third-party market food bulletins over a 60-day period in advance of the request, and when the resulting price change would be six-percent or greater. Allowable third market party bulletins for market adjustments are:
  - a. Urner Barry Market Reports (Price Current or National Provisioner Sheet) - Urner Barry Publications Inc, PO Box 389, Toms River, New Jersey, 08754-0489 exact indicator to be agreed upon between MOR and the successful vendor at the time of the initial award.
  - b. Current Spot Price for the specific food, exact location and poultry federation to be agreed upon between MOR and the successful vendor at the time of the initial award.



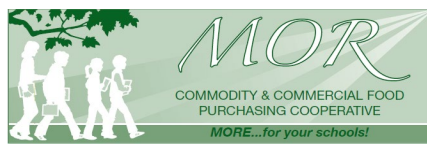


- c. Agricultural Marketing Service, United States Department of Agriculture Market Reports for the Specific food in question, shipping point or location to be agreed upon between MOR and the successful vendor at the time of the initial award.
  - d. Food Institute Reports
  - e. Third market bulletins proposed by the successful Bidder, exact location and federation to be agreed upon between MOR and the successful vendor at the time of the initial award.
  - f. Pricing adjustments will not be considered for contract rollovers/extensions.
14. **Competitive Negotiations:** Michigan State Law and USDA regulations require that MOR follow one of several prescribed bid / acquisition processes. MOR takes the proposal process seriously, and it is its intent to solicit Proposals that are accurate, and that Bidders intend to honor. Bidders are advised that MOR intends to use competitive negotiations in an effort to obtain best value for all desired terms of prices, food processing factors, delivery conditions, and miscellaneous factors. MOR intends to make awards to Bidders that best meets MOR expectations, balancing the highest standards of quality, creativity of proposals and services and value with the lowest costs. MOR will not negotiate with all Bidders within a group. MOR may negotiate prices and terms with the most highly rated Bidders. MOR reserves the right to select vendors in the best interest of the cooperative and to competitively negotiate and award the contract based on the evaluation factors of: member evaluations and taste tests, student evaluations and taste tests, price, food processing factors such as yield, delivery conditions, point of sale and promotional materials and completeness of the proposal. When evaluations have been scored, there is typically a logical separation between the most highly ranked proposals and all other proposals in terms of raw evaluation points. MOR will negotiate with no more than three top ranked Bidders for a particular product or categorical grouping and, in the event of fewer highly rated proposals, MOR may negotiate with less than three. MOR also reserves the right to award entire product categories or groups to a single supplier, or to roll-over previous year's awards, if it is in the cooperative's best interests to reduce carryover, reduce costs, meet minimum load requirements, reduce freight costs and/or maintain supply levels.
15. **Purchase Orders:** All purchase orders placed under this contract shall be invoiced at the contract price prevailing at the time the order is placed.
16. **Delivery/Lead Times:** The MOR Service Providers, Van Eerden Foodservice Company, will receive delivered product. Delivery of high volume products will generally be requested on a weekly basis, and should be delivered no later than 14-work days after receipt of order (ARO). For lower volume products, delivery may be requested on a bi-monthly or monthly frequency and should be delivered no later than 14-21work days ARO. If lead-time requirements for your organization will be different from the specified 10- or 14-days, please record the desired lead time(s) on the proposal document. It is unreasonable for order lead times to exceed 21 days except for seasonal or specialty items.
- Delivery/dock times can be arranged by contacting:
- Van Eerden Foodservice Company**  
**650 Ionia SW, PO Box 3110**  
**Grand Rapids, MI 49501-3110**  
**Phone: (800) 833-7374**
17. **Just in Time Processing and Delivery:** Processing of USDA Donated or commercially processed foods shall be scheduled so as to be fresh on delivery and to minimize loss in the event of a recall. Delivery will be required on a schedule developed by Van Eerden Foodservice Company and will be in response to orders by the MOR member districts. The quantity of product delivered shall never exceed that amount that can be used



by MOR districts in a 60-day period. Deliveries will be requested generally weekly or biweekly for high volume products, and bi-weekly or monthly for lower volume products.

18. **Bill of Lading/Delivery Ticket:** The successful Bidder shall enclose a complete packing slip or delivery ticket with any items ordered and delivered under the awarded contract. The packing slip or delivery ticket shall include at a minimum, the following information: purchase order number, date of order, and a complete listing of items delivered.
19. **Invoices and Statements:** Invoices or statements for product and/or for processing of USDA donated food shall be submitted in triplicate to MOR in care of Van Eerden Foodservice Company, 650 Ionia SW, PO Box 3110, Grand Rapids, MI 49501-3110 for payment along with the vendor invoice and receiving documentation. Invoices or statements shall contain the following information: purchase order number, item number, item description, quantity, unit price, extended totals, and applicable discounts for items delivered. All prices, terms and discounts must be listed on the statement. Failure to enter the above information on the invoice or to submit a timely invoice may cause a delay in payment. Payment shall be made on partial deliveries accepted by Van Eerden Foodservice Company on behalf of MOR. Both Van Eerden Foodservice Company shall in turn, bill schools for the cost of product and will add a fixed fee for delivery. Both Van Eerden Foodservice Company shall maintain records regarding purchases of commercial or food processed food entitled by and received by each school and district or entitlement agency.
20. **Approved State of Michigan USDA Donated Foods/Food Processor:** Any manufacturer awarded a USDA Food-processing contract must have in place a National Processing Agreement or have applied for or received a Master Contract and become listed as an Approved USDA Food Processor by the State of Michigan. Additionally, approved USDA Summary End Product Data Schedules must be provided to the State of Michigan, Michigan Department of Education (MDE), Food and Nutrition Unit within the time specified. MOR will also file SEPDS with MDE for all products selected to meet MOR members' needs.
21. **USDA Processed Donated Foods:** It is desire of MOR to fully use USDA donated food entitlement in the year earned. Furthermore, MOR desire that the transition between USDA processed donated foods and commercial products be seamless and transparent to students and staff members. To effect a seamless transition, a USDA food product will have a commercial equivalent, and the processed food and the commercial equivalent shall be the same portion size, essentially the same formulation, and be packed in a case of equal count and weight. Likewise, both products shall require the same preparation methods and holding characteristics. Taste profiles shall be considered equal to the student customer. The successful Bidder shall accept the USDA donated foods obtained on behalf of MOR member districts under the Federal Food Distribution Program. To the extent USDA approval has been obtained by the successful Bidder, any substitutable food not needed immediately for use by MOR, can be used for production for third parties or sold outright to third parties in connection with its normal business operations provided the USDA product is replaced with an equivalent amount of commercial product to meet MOR production requirements, the procurement specification for the commercial product is equal to or superior than the USDA specification and the transaction is recorded for accountability purposes. The successful Bidder may combine commercial and USDA foods to make products selected by MOR. All products, commercial and food processed shall be ordered, received and subsequently supplied to schools Van Eerden Foodservice Company.
22. **Standard Yield versus Guaranteed Minimum Yield:** Guaranteed minimum yield options can be disruptive to cooperative operations when far more product is returned than was expected. MOR will more favorably rate processors whose product return histories do not exceed approved USDA End Product Data Schedules by more than ten (10) percent for products they propose to supply, provided those items also meet or exceed product specifications. When Standard Yield is an available option for a processor to use, MOR seeks estimated production returns based on this methodology as well as Guaranteed Minimum Yield for the number of servings and net finished pounds of product projected to be returned per delivered truckload of raw



unprocessed food. When Guaranteed Minimum Yield is the only option used by a processor, MOR seeks estimated production returns based on this methodology for projected number of servings and net finished pounds of product projected to be returned per delivered truckload of raw unprocessed food as well as the actual production history for that product in recent years (see Technical Response Form).

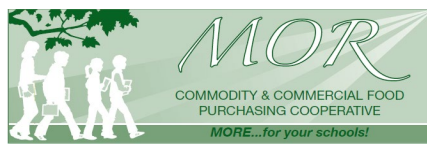
23. **USDA Donated Foods – Form AD-1048, Non-Collusion Certification:** The successful Bidder shall complete and return Form AD-1048 attached hereto, as required by the U. S. Department of Agriculture. Other requirements of the U. S. Department of Agriculture as part of its donated foods program are set forth in Guidelines for Certification attached hereto and made a part of the contract by reference. Contracts over \$25,000 in value shall not be awarded without this form.
24. **USDA Product Accountability “Monthly Performance Report” Requirements:** Accountability records, in the form of the Monthly Performance Report utilized by this vendor and the sample report form attached to the bidder’s proposal, showing USDA Donated Food receipts, amounts processed and returned and remaining inventory shall be provided automatically by the vendor by the 10th of each month to MOR Executive Directors and to Van Eerden Foodservice companies, MOR Service Providers, for the duration of this Agreement.
25. **Evaluation of Proposals:** MOR reserve the right to award or reject proposals on each item separately, as a group of similar items, or as a whole vendor award whichever is in the best interest of MOR; or to waive irregularities of a proposal when in the best interest to MOR. The following evaluation factors will be considered in awarding the negotiated contract to determine best overall value:
  - Pricing Proposal = 30 points
  - Affidavits and Certifications = 5 points
  - Delivery Conditions and Technical Responses = 20 points
  - Volume Discounts and Added Value Services = 20 points
  - Member and Student Preferences = 25 points
  - At the discretion of the MOR Executive Boards, additional points may be awarded for value added incentives proposed in point 15 of the Technical Response Form

MOR make awards only to companies whose products have been tested and approved by members and students. An opportunity to present your products for review takes place at various times throughout the year prior to award.

A technical response form and suggested criteria in response preparation have been provided. However, these suggestions are not intended to limit a Bidder’s creativity in developing a response. Creativity in assisting MOR to meet the goals of saving time and resources (money, duplication of effort, etc.) are encouraged. Creativity in assisting MOR in providing value added services to members is also greatly encouraged. With your assistance, MOR intends to be of ‘unique’ service to its members.

26. **Student Taste Testing:** Product Evaluation and student taste testing will be utilized to evaluate member and student preferences for products that are highly rated on the proposal rubric. MOR may request the amount of product necessary for product evaluation and student testing by member districts. Samples will be provided at no cost to MOR or Van Eerden Foodservice Company and must be supplied within designated time frame. Samples are to be shipped to the respective warehouses of Van Eerden and will be delivered to the participating districts by Van Eerden Foodservice Company. Failure to submit timely samples as requested may be sufficient cause for rejection of the vendor proposal.

For 2023-2024, when testing is needed, MOR will include in-school testing with students in districts wishing to participate in product evaluation. Products tested and approved the last three years, will not be requested or tested again unless there are formulation changes. The most highly rated vendor proposals shall submit one

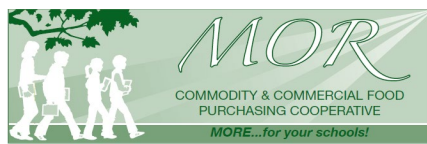


case of samples per designated evaluating district (a maximum of 2 cases), plus one extra case for retention in the event of a quality problem of all proposed products MOR request for taste testing. Samples shall be provided from normal production runs in fully sealed cases and be labeled with typical identifying information and production instructions. Samples shall be typical of that product proposed to be provided in school year 2023-2024. Samples may be tested alone, side by side with the current year's product, or with other products in the same category. Students will also be asked, would they buy/select the product? Products will be tested on a set schedule and test sites will not be testing all products. However, the taste test schedule will include appropriate grade levels in districts from all geographic regions within MOR.

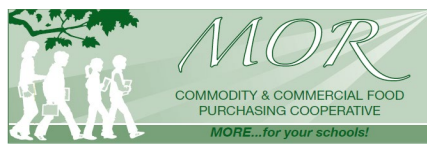
The Taste Testing Evaluation Protocol will be provided to all vendors who wish to receive a copy. Evaluation results will be provided to all vendors supplying product.

- 27. Retention of Samples/Laboratory Testing:** A case of samples provided with those shipped for student taste testing will be retained in the event of a quality specification question after bid award. Should a question arise, the sample and the actual product in question shall be sent to an independent laboratory for a thorough analysis of sensory and physical characteristics as well as chemical composition. In the event that testing is required, the successful Bidder shall bear all testing costs. Items will be disqualified found not to meet established specifications. If a product fails to meet the bid specification, the item will be rejected and returned to the vendor at the vendor's expense.
- 28. Quality or Acceptability Problems in Products Discovered After Contract Award:** If after contract award a Bidder's products do not perform as the manufacturer stated, or if student acceptability of an awarded product(s) is poor, Van Eerden Foodservice Company the MOR agent, will notify the awarded contractor and report the quality issue in writing in an attempt to resolve (Opportunity to Cure) the issue. If the problem is not resolved to MOR satisfaction within a maximum of 30 days after company notification, the contract may be cancelled and re-awarded to the next vendor. Furthermore, if the contract is cancelled, that product will be excluded from consideration on future contracts until the product is reformulated and proved to be satisfactory through testing by MOR member districts. In the event that the quality issue relates to a USDA processed product, the processor shall cooperate with MOR to move any unprocessed donated commodities to another processor.
- 29. Proposal Information:** Proposal files will be available after the contract awards and may be examined by Bidders during normal working hours at MOR offices, but not before July 1, 2023. A minimum of 72-hours notice requesting an appointment shall be required (734-740-2915). No files will be permitted to be removed from the premises. The Initial Proposed Prices will be available electronically after July 1, 2023. With the myriad and variable factors included in the selection of the successful awards, no printed evaluation matrix will be issued. However, the minutes of the MOR Executive Board showing the awards will be furnished upon request. Or an individual company may request a meeting with the MOR Executive Director or MOR designee to discuss where their product or products finished in the overall evaluation.
- 30. Vendor Specifications, Nutrient Analysis / USDA Meal contribution and Requested Samples:** Successful Bidders shall provide nutrient analysis per serving, the usual number of servings per case and certification of USDA meal contribution. All specifications and certifications of meal contributions to USDA meal must be provided within the required evaluation time lines. Products submitted without corroborating information will not be considered for award.
- 31. Labeling:** Labels shall be stamped (preferably with waterproof ink) on the top or ends of each package. In addition, this same uniform code may be stamped on the side of shipping containers. Brand, item, code, count and pack dates are to be clearly identified on master cases and boxes within master cases. Container marking specifications are:

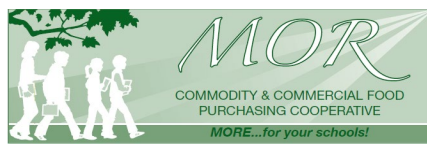




- a. All product numbers must be clearly legible. Numerical markings preferably would be at least  $\frac{3}{4}$ " high to denote proper product code for warehouse personnel. Product codes on carton strap tape are not acceptable.
  - b. Labels on all products must contain the company Name, Product Description, Product code Number, and any ingredient items used in production of the product in legible print. It is the Bidder's responsibility to meet all these requirements.
  - c. All products with labels not meeting approved specifications may be refused at receipt by the MOR Distribution Centers and the Default Provision may be enforced.
  - d. Single product pallet loads are preferred when delivered at the MOR Distribution Centers. Products shipped are preferably separated by the product codes.
  - e. If a mixed pallet load is delivered, the pallet shall be clearly marked "Mixed Load".
- 32. Monosodium Glutamate:** MOR request that products supplied, generally, be free of Monosodium Glutamate (MSG). Bidders must note recognition of and compliance to this requirement on the proposal submittal cover document. Products that are not "MSG free" must be listed by product name and brand on the "Request for Proposal Form".
- 33. Allergens:** MOR request that products supplied that contain one or more of the 8 major allergens as ingredients or that were produced in a plant or on a line that is not certified "allergen free" be listed in a separate document. Bidders must note recognition of and compliance to this requirement on the proposal submittal cover document. Products that are NOT allergen free or produced in an allergen free environment must be listed by product name and brand. In the event that a Bidder fails to note allergen contamination, and a student in an allergen-controlled district suffers injury or death from consuming your product, your company assumes full legal liability for the event. Furthermore, if you certify products that are allergen free and MOR later discovers they are not, your company may your contract terminated, and we will negotiate a contract with an allergen manufacturer. This is intended only as a last recourse and not as a deterrent to Bidders.
- 34. Sodium Content:** Vendors need to be aware that every attempt is being made by districts through various USDA healthy school meals regulations to move toward lower sodium standards. Preference will be given to reduced sodium products that are acceptable to students. In evaluating products for an award, sodium levels as well as fat grams and whole grains will be evaluation factors.
- 35. Definitions/ Terms of Reference:**
- a. Cooked: The terms "cooked" and "fully cooked" (F/C) all imply the product is to be fully cooked in accordance with Hazard Analysis and Critical Control Point (HACCP) standards for that product. Such products will generally be heated prior to service.
  - b. Precooked: The term "precooked" implies that additional cooking is required before service.
  - c. IQF/IFF/IF: The term "individually quick frozen" (IQF), "individually fresh frozen" (IFF), or "individually frozen" (IF) means that the separate parts and pieces can be easily removed from packages while the product is in a frozen state. Either is acceptable. The term "quick" means frozen "at the time" in a freezer tunnel, either by air blast, nitrogen or carbon dioxide.
  - d. IW or I/W: The abbreviation IW or I/W means "individually wrapped" products, generally a single portion.
  - e. SS: The abbreviation SS means "single serve" products, generally a single portion or individual unit.
  - f. IMPS: Institutional Meat Purchase Specifications (IMPS) were developed by the National Association of Meat Purveyors. The packer must be willing to certify to the service provider and/or user that the product meets the IMPS specifications. These specifications standardize various fresh meat cuts or combination products for purpose of trade identification as to how they are cut, trimmed, ground, mixed, blended and the state of refrigeration required, i.e., chilled or frozen. IMP specifications are designated by numbers that have a very specific meaning in identifying the product.
  - g. Vegetable Protein Products (VPP): The initials VPP and ISP are used herein to refer to forms of Vegetable Protein because the commonly used initials TVP are a trademark of the ADM (Archer Daniels Midland



- Company). Items which contain VPP and ISP must carry on the main face of the label the following statement, "This item contains Vegetable Protein Product(s) which are authorized as an alternate food in the Child Nutrition Programs." If a product has a CN Label then the VPP statement is not required.
- h. Breeding of Meat and Poultry Products: Identification as listed for meat and poultry require twenty-five percent (25%) breeding at time of pack. Federal regulations require that breeding (for meat and poultry) cannot exceed thirty percent (30%) without modifying the name of the product. Packers of breaded meat and poultry products normally will certify that breeding at time of pack will range between twenty-four (24%) and twenty-eight (28%). Thus, twenty-five (25%) means "nominal." If a product has a CN label, then a breeding certificate is not required.
  - i. Fish Inspection and Grading: Fish as identified herein must bear the PUFI (Packed under Federal Inspection) Shield of USDC Grade Shield.
  - j. Raw, Cooked or Pre-Cooked: Meats, poultry and seafood are deemed to be raw (uncooked) unless the term "cooked" is used. The term "cooked" implies "fully" cooked, unless a lesser degree of doneness is specified. The term "precooked" implies that additional cooking is necessary before service.
  - k. CN Label: When a product is CN (Child Nutrition) labeled, it is "certified" by the packer to conform to the nutritional requirements of the USDA Food & Nutrition Service (FNS). The label shows the contribution made by a given amount of product toward meal requirements. NOTE: MOR do NOT require or expect CN labeling. It does however require USDA certification of meal pattern components provided by the products.
  - l. Grades: The grades specified herein for fruits, juices and vegetables refer to "Packer Grades" except as specifically indicated otherwise. Packer Grades, offered by major buying groups, have been proven reliable over the years in that these groups utilize USDA standards.
  - m. Net Container Quantity - The minimum net quantity of all products in cans and jars shall be in accord with Section 401 of the Federal Food, Drug and Cosmetics Act regarding the individual specifications for standard of fill for the product as prescribed in 21 CFR Part 100-169.
  - n. Drained Weights - Drained weight of "wet pack" items shall conform to good industry practices and the minimum requirements of the Federal Food, Drug and cosmetics Act for drained weight, as prescribed in the individual specifications of each product in 21 CFR Part 100-169. Except for whole tomatoes, drained weight is not a factor of USDA grade.
  - o. Fill of Containers - All products shall be filled as full as practical under good commercial packing practices without impairment of quality and otherwise in accord with Section 401 of the Federal Food, Drug and cosmetics Act, regarding individual specifications for standards of fill (21 CFR Part 100-169).
  - p. Standards of Identity - All products must conform to U.S. minimum standards requirements. If not, the supplier (packer) is in violation of the contract not only with NETCO, but also with the Federal Food and Drug Administration and/or the Federal Trade Commission. Three (3) important Federal regulations pertaining to canned foods are listed in number 45 below. These and other federal and state regulations are automatically part of the proposal requirements.
  - q. Natural Proportion - Is listed as chicken products containing both white and dark meat in proportions found naturally in poultry.
- 36. Ability to Supply/Deliver:** Quote prices only if merchandise can be obtained and delivered on specified delivery dates/schedules and in delivery amounts required by MOR and Van Eerden Foodservice Company as defined in the minimum order section. Initial orders for July and August delivery will likely be the largest ones placed and may represent as much as one fifth of total MOR requirements to meet "back to school" needs. Item proposals shall be binding. MOR shall have the option to collect a default penalty of (a) ten percent (10%) of the bid price value of the defaulted items ordered but not delivered as specified, or (b) the difference between the contract price and the cost of an equivalent item obtained by quotation through another vendor. Strikes, Acts of God, and similar causes not under control of the vendor will be considered exempt from this default provision. This is intended only as a last recourse and not as a deterrent to bidders. Vendors should confirm their inventories, shippers and suppliers before submitting proposals.

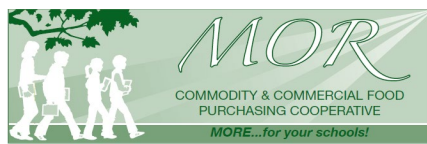


MOR reserves the right before awarding the contract to require a successful Bidder to submit evidence of its ability to meet orders of desired shipment sizes within requested delivery windows.

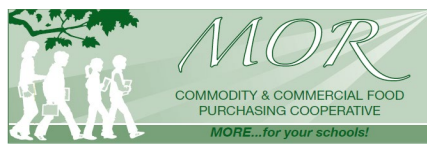
37. **Vendor Capability:** A successful bidder must have the capacity- physically and financially, to supply items to MOR in the quantities required at the time requested. A successful bidder must have a proven record of service, particularly with respect to the delivery of all items on a regularly scheduled basis. A bidder may be designated as unacceptable if the requirements listed are violated and/or poor communication exists between the vendor and the purchaser.
38. **Order Fill Rate:** Fill rate has been an issue for cooperative members for the past couple of years. Members have asked that fill rate be part of the evaluation process. Please list in your proposal your order fill rate to Michigan distributors for each business segment during 2021 and 2022. Please also project what your fill rate will be in 2023 for our school group.
39. **Delivery Temperatures:**
  - a. **Frozen:** All frozen foods are to be delivered rock hard frozen at 0 degrees Fahrenheit or below. Partially thawed products with evidence of thawing and re-freezing will be rejected at the time of delivery. The MOR Service Providers will not refreeze partially thawed deliveries.
  - b. **Refrigerated:** All refrigerated products shall be delivered at a product temperature appropriate to industry guidelines for that specific product, and shall have been maintained at this temperature at all times during storage and shipment.
  - c. **Dry:** All dry products shall be above 40 degrees Fahrenheit.
40. **Age and Condition of Items:** Stocks shall be fresh and sound, prepared in properly equipped plants under modern sanitary conditions in accordance with the best commercial practice, and free from decay, discoloration or foreign matter. All products shall pass through metal detection before packaging. Containers shall be clean, sound, compact, sturdy and sealed. Opened, damaged or leaking packages will not be accepted. Any hidden damage discovered after acceptance and delivery at Van Eerden Foodservice Company will be reported to the successful Bidder or for the appropriate credit. Dated products shall meet industry standards for remaining shelf-life upon delivery to Van Eerden Foodservice Company. In no instance (except for yogurt and produce) shall there be less than 60 calendar days of guaranteed freshness as defined by the product expiration date on the exterior package at the time of delivery to Van Eerden Foodservice Company.
41. **Inspection/Acceptance/Rejection:** The MOR Service Providers shall inspect both truck and product. Inspection and acceptance or rejection of all items shall be at the destination. Van Eerden Foodservice Company on behalf of MOR, shall have the power and authority to reject any and all materials furnished which, in its opinion, are not in strict compliance and conformity with the requirements of the specification as outlined in the proposal or to the sample submitted by the vendor. All articles so rejected shall be promptly removed from the premises of Van Eerden Foodservice Company, at the vendor's expense, within 21 days. No brand or product substitutions will be accepted unless written prior approval is obtained from MOR or its authorized representative. Items found to be defective or not in accordance with the contract specifications shall be replaced within ten days (10) by the successful Bidder at no cost to the MOR participating school districts. Failure to replace items not meeting the contract specifications and/or defective items shall be considered sufficient cause for default action under the default provision of the contract.

A second inspection/acceptance and rejection process shall occur at the end user level – either school sites or school district warehouses. Product found unacceptable at this level shall be rejected at the dock or upon opening the case (in the event of hidden damage), the reason for the refusal will be documented and Van Eerden Foodservice Company shall be informed to obtain credit or replacement at no additional charge.

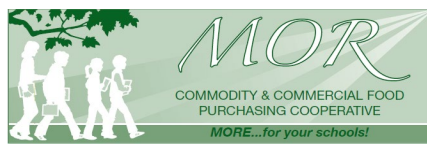




- 42. Warranty:** The Bidder agrees that all items furnished under this contract shall be covered by the most favorable commercial warranties the Bidder provides any customer for such items, and that the rights and remedies provided therein are in addition to any other provision of this contract. The Bidder shall provide copies of all warranties, which shall apply to deliveries under this contract with its proposal.
- 43. Product Discontinuance:** It is expected that specified products will be available throughout the entire period of the contract. In the event a successful Bidder discontinues a product, the successful Bidder will notify MOR Service Providers, Van Eerden Foodservice Company, and propose alternative items and pricing to fulfill the contract. MOR may exercise the option to negotiate with other vendors at the time. If USDA Donated Foods are in the successful Bidder's inventory, and use on behalf of MOR are no longer possible, the First Bidder is responsible to transfer the remaining USDA product to the new Bidder at no cost to MOR.
- 44. Federal Regulation Compliance:** Since the goods to be acquired under this request for proposal will be purchased in part or in whole with federal dollars, products shall be procured, packaged and inspected in accordance with all federal, state and local government standards and all applicable regulations such as Pure Food, Drug, and Cosmetic Act (Title 21 CFR), Agricultural Marketing Act, Fish and Wildlife Act, Meat Inspection Act, The Tariff Act, Poultry Products Inspection Laws, The Perishable Agricultural Commodities Act, and Anti-Trust Laws. Certification of compliance with the following Acts is required: Energy Policy and conservation Act (PL 94-163); Occupational Safety and Health Act and the standards and regulations issued thereunder; Fair Labor Standards Act; Department of Labor Regulations (41 CFR Part 60; Section 306 of the Clean Air Act (42 U.S.C. 1857 (h); Section 508 of the Clean Water Act (333 U.S.C.1368); Executive Order 117389, 2 CFR 200.318-326, Appendix II to part 200, 7 CFR 250, and 7 CFR 210.21 and Environmental Protection Agency Regulations (40 CFR Part 15).
- 45. Civil Rights:** Any awarded company shall comply with all applicable civil rights laws, as amended which include but are not limited to: Title VI and the Title VII of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; 7 CFR Parts 15, 15a, and 15b; the Americans with Disabilities Act; FNS Instruction 113-1, Civil Rights Compliance and Enforcement – Nutrition Programs and Activities; the Michigan Elliott-Larsen Civil Rights Act; and the Michigan Persons with Disabilities Civil Rights Act
- 46. Equal Opportunity Act of 1975:** The MOR policy is in firm support of the provisions of the Equal Opportunity Act of 1975. MOR must therefore be assured by the successful Bidder in this Proposal that he is an equal opportunity employer according to the provisions of the Act.
- 47. Hold Harmless Clause:** The Bidder shall hold harmless and indemnify MOR, its member districts, the Lead Districts, Van Eerden Foodservice Company, and their respective officers and employees, for every claim, demand, suit and award which may be made by reason of:
- Any injury to person or property sustained by any person, firm, or corporation caused by any act, neglect, default, or omission of the Bidder or any person, firm or corporation, directly or indirectly employed by it upon, or in connection with its performance under the contract;
  - Any liability that may arise from the furnishing or use of any copyrighted or not copyrighted formula, secret process, or patented or not patented invention in the performance of the services called for under the contract;
  - The Bidder, at its own expense and risk, shall bear all reasonable attorney fees, costs and expenses which may be incurred in defending against any legal proceeding that may be brought against MOR, its Member Districts and the Lead Districts, and Van Eerden Foodservice Company, as well as their officers and employees, on any such claim or demand, and satisfy any judgment that may be rendered against any of them.



- 47. Product Protection Liability / Guarantees:** The Bidder whose name and address appear on the product package is the responsible party for Product Protection Liability. Bidders shall take immediate action to correct any situation in which product integrity is violated. In the event of a mandatory or voluntary recall, Bidders shall remove or authorize disposal of all recalled product from Van Eerden Foodservice Company, MOR's Service Providers, within twenty-one (21) days and shall replace as soon as possible, the product with new product, at no cost to MOR or Van Eerden Foodservice Company. All manufacturers and processors shall have filed appropriate Product Protection/Liability Insurances and assurances with the USDA.
- 48. Protection from Bio-Terrorism or Other Such Contamination in Manufacturing:** Manufacturers are expected to comply with all federal laws protecting the food supply. It is expected that the Bidder whose name and address appear on the product package has implemented safeguards at all points in their manufacturing and delivery process to protect against intentional and unintentional contamination. Bidders shall take immediate action to correct any situation in which product integrity is violated or product becomes contaminated. If contamination should occur, Bidders shall remove or authorize disposal of all contaminated product from Van Eerden Foodservice Company, MOR Service Providers, within twenty-one (21) days and shall replace the product with new product at no cost to MOR, Van Eerden Foodservice Company, as soon as possible.
- 49. Buy American Act / Import Products:** The 1998 reauthorization of the National School Lunch Act requires school districts participating in the National School Meals Programs in the contiguous 48 states of the United States to buy food products produced in the United States (domestic) when using federal funds. Therefore, if there is a domestic and non-domestic food product available, you must supply domestic products. You may supply non-domestic products only when domestic products are unavailable. As defined in this legislation, a domestic food is an agricultural food (for example beef, pork, chicken, fruits, vegetables, oils or grains) that is produced in the United States. A domestic food product is processed in the United States using substantially domestic agricultural commodities. Substantially means that over 51 percent of the finished processed product comes from American produced products. Implementing federal regulations are 7 CFR 210.21 and 220.16 published on September 20, 1999. You may be required to provide certification of domestic origin and content. You must certify that the majority of food products you propose to provide and supply meet the federal requirements in the "Buy American Act" and stipulate which specific products are unavailable domestically. Exceptions to this rule would typically be: pineapple, mandarin oranges, olives, tuna fish, tea, spices and coffee. In the event the Bidder supplies or delivers products contrary to the requirements of this section or applicable laws and regulations, MOR may pursue remedies for default as provided in Section 53, and or may terminate this Agreement as provided in Section 53. The Bidder shall hold MOR its member districts, its Lead Districts, Van Eerden Foodservice Company harmless from any fines, penalties, costs or expenses imposed upon or incurred by any of them as a result of the Bidder's non-compliance with such laws and regulations. This purchasing requirement does not apply in instances when:
- MOR has unusual or ethnic food preferences which can only be met through purchases of products not produced in the United States,
  - The product is not produced in the U.S. in sufficient and reasonable quantities of a satisfactory quality to meet general needs,
  - The cost of the US product is significantly higher than foreign products (MOR defines significantly higher to be when US product is twenty-five percent higher than the foreign product).
- 50. Debarment Disclosure:** If a Bidder has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, the Bidder shall disclose that information in its offer. Failure to do so shall result in rejection of its offer and shall constitute grounds for termination of the Agreement. The Bidder shall have a continuing obligation to disclose to MOR Lead Districts any proceedings commenced during the term of this Agreement which might result in debarment, suspension or disqualification from participation in public procurement activities and such proceedings shall constitute grounds for termination of this Agreement as provided in Section 53.



## 51. Stop Work Order & Termination

### 51.1 Stop Work Order

MOR may, by issuing a Stop Work Order, require that the Contractor fully or partially stop work for a period of up to 90 calendar days, and for any further period to which the parties agree. Upon receipt of the Stop Work Order, the Contractor must immediately take all reasonable steps to minimize incurring costs. Within the period of the Stop Work Order, MOR must either: (a) terminate the Stop Work Order; or (b) terminate the work covered by the Stop Work Order.

### 51.2 Termination of Stop Work Order

The Contractor must resume work if MOR terminates a Stop Work Order or if it expires. The parties will agree upon an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract must be modified, if: (a) the Stop Work Order results in an increase in the time required for, or the Contractor's costs properly allocated to, the performance of the Contract; and (b) the Contractor asserts its right to an equitable adjustment within 20 days after the end of the Stop Work Order by submission of a request for adjustment to MOR; provided that, MOR may receive and act upon the Contractor's request submitted at any time before final payment. Any adjustment will conform to the requirements.

### 51.3 Allowance of the Contractor's Costs

If MOR fully or partially terminates the work covered by the Stop Work Order, for reasons other than material breach, the termination is a termination for convenience under Section 51.6, Termination by MOR, and MOR will pay reasonable costs resulting from the Stop Work Order in arriving at the termination settlement. MOR is not liable to the Contractor for lost profits because of a Stop Work Order issued under Section 51.1, Stop Work.

### 51.4 Notice and Right to Cure

If the Contractor breaches the Contract, and MOR, in its sole discretion, determines that the breach is curable, MOR will provide the Contractor notice of the breach and a period of at least 30 days to cure the breach. MOR does not need to provide notice or an opportunity to cure for successive or repeated breaches or if MOR determines, in its sole discretion, that a breach poses a serious and imminent threat to the health or safety of any person or the imminent loss, damage, or destruction of any real or tangible personal property.

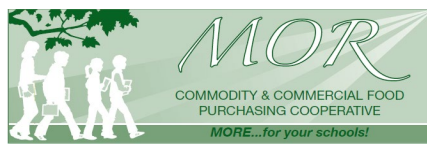
### 51.5 Termination for Cause

(a) MOR may fully or partially terminate this Contract for cause by notifying the Contractor if the Contractor: (i) breaches any of its material duties or obligations (including a Chronic Failure to meet any SLA); or (ii) fails to cure a breach within the time period specified in a notice of breach provided by MOR

(b) The Contractor must pay all reasonable costs incurred by MOR in terminating this Contract for cause, including administrative costs, attorneys' fees and court costs, and any additional costs MOR incurs to procure the deliverable(s) from other sources. Re-procurement costs are not consequential, indirect, or incidental damages, and cannot be excluded by any other terms otherwise included in this Contract, provided the costs are not in excess of 50% more than the prices for the Deliverable(s).

(c) If MOR partially terminates this Contract for cause, any charges payable to the Contractor will be equitably adjusted to reflect those deliverable(s) that are terminated. MOR must pay for all deliverable(s) for which final acceptance has been granted before the termination date. Any services or related provisions of this Contract that are terminated for cause must cease on the effective date of the termination.

(d) If MOR terminates this Contract for cause and it is determined, for any reason, that the Contractor was not in breach of the Contract, the termination will be deemed to have been a termination under



Section 51.6, Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in that Section.

#### 51.6 *Termination for Convenience*

MOR may fully or partially terminate this Contract for its convenience if MOR determines that a termination is in MOR's best interest. Reasons for the termination are within the sole discretion of MOR and may include: (a) MOR no longer needs the deliverable(s) specified in this Contract; (b) a relocation of office, program changes, or changes in laws, rules, or regulations make the Deliverable(s) no longer practical or feasible for MOR; (c) unacceptable prices for Contract changes; or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any solicitation issued by MOR. MOR may terminate this Contract for its convenience by giving Contractor notice at least 30 days before the date of termination. If MOR chooses to terminate this Contract in part, any charges payable to the Contractor must be equitably adjusted to reflect those deliverable(s) that are terminated.

#### 51.7 *Termination for Criminal Conviction*

MOR may terminate this Contract immediately and without further liability or penalty if the Contractor, an officer of the Contractor, or an owner of a 25% or greater share of the Contractor is convicted of a criminal offense related to a MOR, public, or private Contract or subcontract.

#### 51.8 *Rights and Obligations upon Termination*

(a) If MOR terminates this Contract for any reason, the Contractor must:

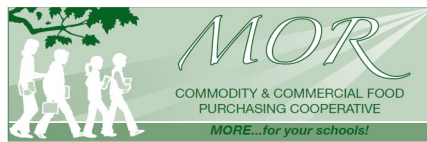
- (i) stop all work as specified in the notice of termination;
- (ii) take any action that may be necessary, or that MOR may direct, to preserve and protect deliverable(s) or other MOR provided directly or indirectly to the Contractor by any entity, agent, or employee of MOR;
- (iv) transfer title in and deliver to MOR, unless otherwise directed, all deliverable(s) intended to be transferred to MOR at the termination of the Contract (which will be provided to MOR on an "As-Is" basis except to the extent MOR compensated the Contractor for warranty services related to the materials);
- (v) to the maximum practical extent, take any action to mitigate and limit potential damages, including terminating or limiting subcontracts and outstanding orders for materials and supplies; and
- (vi) take all appropriate action to secure and maintain MOR information confidentially.

(b) If MOR terminates this Contract under Section 51.6, Termination for Convenience, MOR must pay the Contractor all charges due for deliverable(s) provided before the date of termination and, if applicable, as a separate item of payment, for work-in-progress, based on a percentage of completion determined by MOR. All completed or partially completed deliverable(s) prepared by the Contractor, at the option of MOR, become MOR's property, and the Contractor is entitled to receive equitable compensation for those deliverable(s). Regardless of the basis for the termination, MOR is not obligated to pay or otherwise compensate the Contractor for any lost expected future profits, costs, or expenses incurred with respect to deliverable(s) not actually completed.

(c) If MOR terminates this contract for any reason, MOR may assume, at its option, any subcontracts and agreements for deliverable(s), and may pursue completion of the deliverable(s) by replacement contract or as MOR deems expedient.

#### 11.9 *Reservation of Rights*

In the event of any full or partial termination of this contract, each party reserves all rights or remedies otherwise available to the party.



#### 11.10 Contractor Transition Responsibilities

If this Contract terminates under, Termination by MOR, the Contractor must make reasonable efforts to transition the performance of the work, including all applicable equipment, services, software, and leases, to MOR or a third party designated by MOR within a reasonable period of time that does not exceed 30 days from the date of termination. The Contractor must provide any required reports and documentation.

#### 11.11 Termination by Contractor

If MOR breaches the contract and the Contractor, in its sole discretion, determines that the breach is curable, the Contractor will then provide MOR with notice of the breach and a time period (not less than 30 days) to cure the breach.

The Contractor may terminate this Contract if MOR: (a) materially breaches its obligation to pay the Contractor undisputed amounts due; (b) breaches its other obligations to an extent that

makes it impossible or commercially impractical for the Contractor to complete the deliverable(s); or (c) does not cure the breach within the time period specified in a notice of breach. The Contractor must discharge its obligations in Dispute Resolution, before it terminates the contract.

51.

## 52. Bid Protest Process

Bid protests are filed by Vendors because they seek to remedy a wrong, actual or perceived, which could inflict or has inflicted injury or hardship to their company as a result of some action taken by MOR during the solicitation process. Common reasons for Vendors filing a bid protest include:

- The Master Agreement was awarded to Vendor with higher prices.
- The Vendor proposal was rejected for invalid reasons.
- The Vendor awarded the resultant Master Agreement did not comply with RFP specifications.

### 1. General Authority

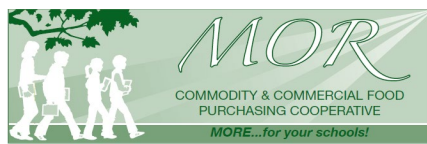
MOR Administrators maintain the exclusive authority and responsibility to purchase and rent all materials, supplies and equipment, furnishings, fixtures and all other personal property for use by MOR Cooperative, districts or agencies which are governed by MOR Board.

### 2. Protest Procedure

Upon a determination of Vendor selection from a bid process, the Purchasing Agent will post a "Notice of Intent to Award" on Wayne RESA's bid website, and notify all solicitation participants of the intended award via email.

- a. Non-selected Vendors will have three (3) business days from the date the notice is posted to file a formal bid protest with MOR Administrators or the designee.
- b. The bid protest, which must be received by Wayne RESA Administrator or designees within the three (3) day period, shall be in writing, and include the specific facts, circumstances, reasons and/or basis for the protest. This written notice may be in the form of a letter, fax or email.
- c. Upon execution of the Master Agreement with the selected Vendor, MOR Administrator or designee will not take action on a bid protest, but a written response will be provided to the protesting Vendor.
- d. If a Vendor's bid protest is appropriately filed, MOR Administrator or designee may delay the award of the Master Agreement until the matter is resolved.





- e. Notwithstanding the foregoing, throughout the bid protest review process, MOR has no obligation to delay or otherwise postpone an award of a Master Agreement based on a bid protest. In all cases, MOR reserves the right to make an award when it is determined to be in the best interest of the MOR cooperative to do so.
- f. MOR Administrator or designee will respond to all bid protests in a timely manner.

**53. Default:** MOR may, by written notice of default to the successful Bidder, terminate the whole or any part of their order under this contract. Remedies for default shall include, but not be limited to, failure to meet contract terms delineated above. The successful Bidder shall be liable for any difference in cost between agreed price and price paid to an alternate manufacturer, including expenses incurred to make alternate purchases. Should MOR bring suit against defaulter, and prevail in such action, defaulter shall pay all reasonable attorneys' fees and other expenses for such litigation. In the event of default, Van Eerden Food Service on behalf of MOR shall have the option to collect:

- a. Ten percent (10%) of the contract price value of the defaulted items ordered but not delivered as specified or,
- b. The difference between the contract price value and the cost of comparable items of similar quality, if available, or better quality if products of similar quality are unavailable, as obtained through another vendor.

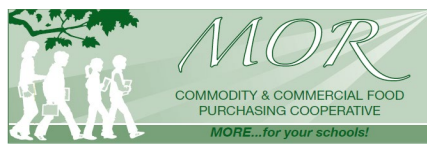
In the event that any successful Bidder shall default, cancel or cause to have cancelled the contract, that successful Bidder shall have forfeited the right to bid or propose for contracts originating from MOR for twenty-four (24) months or two contract periods, whichever is the longer. Nothing herein shall be construed to imply that any party shall have any right to submit a bid or proposal to MOR for any product or service.

**53. Legal Defense:** The Bidder/Successful Bidder at its own expense and risk, shall defend any legal proceeding that may be brought against MOR, the Lead Districts, each member district, Van Eerden Foodservice Company, and their agents, officers and employees, on claims caused in material and substantial part by the Bidder and not caused in material and substantial part by an act, neglect, default or omission of MOR or Van Eerden Foodservice Company, and shall indemnify and hold harmless all such parties against any judgment, cost or expense that may be rendered against or incurred by any of them in such proceedings. This Agreement shall be governed by the laws of the State of Michigan. Any litigation brought between the parties to this contract shall be brought and maintained only in the District Court for the State of Michigan, County of Wayne or the U.S. District Court for the State of Michigan.

**54. Records Retention:** The successful Bidder agrees to retain all books, records, and other documents relative to this agreement for three (3) years plus the current year after final payment. The successful Bidder will assure that subcontractors meet the same records retention requirement. MOR, its authorized agents, and/or state/federal representatives shall have full access to and the right to examine any of said materials during said period. If an investigation or audit is in progress, records shall be maintained until the stated matter is closed.

**55. Taxes:** Purchases made under provisions of any contract established as a result of this invitation are exempt from federal, state and local taxes, and Bidders shall quote prices that do not include such taxes. MOR and its member districts shall not be responsible for payment or reimbursement of any taxes paid by the contractor during the terms of this contract. Exemption certificates will be furnished upon request.

**56. Gifts, Gratuities or Kickbacks:** Acceptance of gifts, gratuities or kickbacks from Bidders and the offering of gifts by Bidders to MOR Board Members or Administrators is prohibited. (Copeland"Anti-Kickback" Act)



**57. Miscellaneous Provisions:** The following terms and conditions shall be deemed to be included in any contract negotiated with MOR except to the extent the final contract expressly modifies such terms:

- a. **Representations and Warranties.** Bidder represents and warrants that all of the information in its proposal is true and accurate and that MOR and its member districts shall be entitled to rely upon the same as the basis for entering into this contract. Bidder shall immediately notify the Lead District(s) in writing throughout the term of this contract upon discovery that any of the facts or assertions in the Bidder proposal are inaccurate.
- b. **Financial Information.** Throughout the term of this contract, Bidder shall provide to MOR, upon request, updated financial reports and data, including but not limited to updates of any financial information in the successful Bidder's proposal and financing commitments from financial institutions.
- c. **Independent Contractor.** Bidder shall perform its duties hereunder as an independent contractor, not as an employee of MOR or any of its member districts. Neither Bidder nor any agent or employee of the Bidder shall be or shall be deemed to be an agent or employee of MOR or any of its member districts. Bidder shall pay when due all required employment taxes and income tax withholding, including all federal and state income taxes and local taxes on any monies paid pursuant to this contract. Bidder shall be solely responsible for procuring and paying for workers' compensation and unemployment compensation insurance for all employees performing services for the benefit of MOR and its member districts. Bidder shall have no authorization, express or implied, to bind MOR or its member districts to any agreements, liabilities, or commitments except as expressly set forth herein. Bidder shall be solely responsible for its own acts, as well as the acts of its employees and agents.
- d. **Notice and Representative.** For the purposes of this contract, the representative for MOR is as follows:

Charles Wolford,  
MOR Executive Director  
Wayne RESA  
33500 VanBorn Road  
Wayne, MI 48184  
Phone: 734-740-2915  
Email: [wolford@macservcorp.com](mailto:wolford@macservcorp.com)

The person(s) listed on the "Proposal Response Form" will be considered the official contact person unless the company specifies otherwise.

Any notice required or permitted may be delivered in person, by facsimile (unless otherwise stated), by electronic mail or by registered or certified mails to the party at the address provided by MOR or by the Bidder. If sent only by registered or certified mail, the notice shall be effective three (3) days after it has been posted in a U.S. mail depository with sufficient postage attached thereto. Notice of change of address or change of representative shall be treated as any other notice.

- e. **Legal Authority.** Bidder warrants that it possesses the legal authority to enter into this contract and that it has taken all actions required by its procedures, bylaws, and/or applicable law to exercise its authority, and lawfully authorizes its undersigned signatory to execute this contract and bind Bidder to its terms. The person executing this contract on behalf of Bidder warrants that he has full authority to execute this contract.
- f. **Conformance of Law.** Bidder and its agent(s) shall at all times during the term of this contract strictly adhere to all applicable federal laws, state laws, executive orders, and implementing regulations as they currently exist and may hereafter be amended.
- g. **Litigation.** Bidder shall, within five (5) calendar days after being served with a summons, complaint, or other pleading, which has been filed in any federal or state court or administrative agency, notify MOR, in writing, that it is a party defendant in a case which involves services provided under this contract; and shall deliver copies of such document(s) to MOR's Executive Directors. The term "litigation" includes an assignment for the benefit of creditors, and filings in bankruptcy, reorganization, and/or foreclosure.





- h. Third Party Beneficiaries. All rights of action relating to enforcement of the terms and conditions of this contract shall be strictly reserved to MOR and Bidder. Nothing contained in the contract shall give or allow any claim or right of action whatsoever by any other third person or entity. It is the express intention of MOR and Bidder that any such person or entity (other than MOR or Bidder) receiving services or benefits under the contract shall be deemed an incidental beneficiary only.
- i. Waiver. The waiver of any breach of a term hereof shall not be construed as a waiver of any other term, or the same term upon subsequent breach.
- j. Survival. MOR and successful Bidders' obligations under the contract Documents shall survive following termination or expiration to the extent necessary to give effect to the intent and understanding of the parties.
- k. Assignment and Subcontracting. The duties and obligations of successful Bidder arising hereunder cannot be assigned, delegated, or subcontracted except with the express prior written consent of MOR. Any subcontracts authorized by MOR shall be subject to the requirements stated herein for the successful Bidder. The successful Bidder is responsible for all subcontracting arrangements, delivery of services, and performance of any subcontractor. Bidder warrants and agrees that any subcontract, resulting from its performance of the terms and conditions of this contract, shall include a provision that the said subcontractor shall abide by the terms and conditions herein. Also, Bidder warrants and agrees that all subcontracts shall include a provision that the subcontractor shall indemnify and hold harmless MOR and its member districts against any claim related to the subcontractor's performance.

The following is an integral part of this Request for Proposal:

Bid Sheet form is an excel spreadsheet that contains the pricing form and the technical response form.