



REQUEST FOR PROPOSALS

Solicitation No: 23-0007

For the Provision of

Broadline Groceries and the Storage and Distribution of USDA Food Products

RFP Closing:

February 15, 2024 at 2:00 PM Pacific Time

Issued by:

Beaverton School District 48J

1260 NW Waterhouse Ave

Beaverton, Oregon 97006

November 3, 2023

Questions must be submitted in writing via email to:

contracts@beaverton.k12.or.us

Deadline for Questions: February 7th, 2024 at 3:30 PM PST

REQUEST FOR PROPOSAL (RFP)

Solicitation No: RFP 23-0007

Summary

The purpose of this Request for Proposals (Solicitation) is to obtain competitive Proposals from qualified Proposers interested in the provision of Broadline Groceries and the Storage and Distribution of USDA Food Products.

Interested Proposers must submit a Proposal pursuant to the provisions of this Solicitation by email only to: contracts@beaverton.k12.or.us NOT LATER THAN:

SOLICITATION DUE DATE AND TIME (CLOSING):
February 15, 2024 at 2:00 PM Pacific Time

No public opening will occur. Proposals will be opened and recorded. Subject to public records laws, the contents of any Proposal will not be disclosed to the public until a notice of intent to award has been issued or the Solicitation is cancelled after opening Proposals.

Proposers are solely responsible for ensuring that the Beaverton School District receives its Proposal.
LATE PROPOSALS WILL NOT BE ACCEPTED.

Prospective Proposers must register with Oregon Buys – <http://oregonbuys.gov/> to obtain the solicitation and addendum documents.

All questions and comments regarding this solicitation must be directed ONLY BY EMAIL to: contracts@beaverton.k12.or.us

PROPOSALS MUST BE PURSUANT TO THE PROVISIONS OF THIS SOLICITATION.

THE DISTRICT MAY REJECT ANY PROPOSAL NOT IN COMPLIANCE WITH ALL PRESCRIBED REQUIREMENTS.

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Non-Discrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotope, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at [How to File a Program Discrimination Complaint](#) and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

USDA is an equal opportunity provider, employer, and lender.

SECTION I – Instructions
Solicitation No: RFP 23-0007

Broadline Groceries and the Storage and Distribution of USDA Foods Products

1. INTRODUCTION:

This Solicitation is issued pursuant to ORS 279A, ORS 279B and the Oregon Attorney General Model Rules Divisions 46 and 47.

2. DEFINITIONS:

The term "District" or "Owner" throughout this document means the Beaverton School District (BSD). The term "Proposer" means the person or firm that submits a Proposal in response to this Solicitation. The term "Proposal" or "Offer" means a written response to provide Goods or Services in response to this Solicitation. "Closing" means the date and time specified in the Solicitation as the deadline for submitting Proposals. "Provider" or "Supplier" means the firm awarded a Contract as a result of this Solicitation.

3. SOLICITATION REVIEW:

Proposers must carefully review the Solicitation documents and are responsible for comprehending and adhering to all terms and conditions. Any defects, ambiguities, omissions, or errors should be brought to the District's attention by protest process outlined in Section III, Instructions to Proposers, Bullet 7: 'QUESTIONS/CLARIFICATIONS/CHANGES AND SOLICITATION PROTEST', protests or appeals based on such defects, ambiguities, omissions or errors received after issuance of the Notice of Intent to Award (NOI) may not be receive favorable consideration.

4. BACKGROUND:

- a. The Beaverton School District encompasses approximately 57 square miles in northwestern Oregon in Washington County. The District, located in the Portland, Oregon metro area, is the third largest School District in Oregon.
- b. The Beaverton School District has approximately 4,700 employees. The District is responsible for educating approximately 39,000 students in kindergarten through grade 12 at thirty-four (34) Elementary Schools, nine (9) Middle Schools, six (6) High Schools, and five (5) Option Schools - Flex-online does not provide a school lunch.
- c. Potential work is to be performed on an as needed basis, or as otherwise directed, at these sites and any future properties or interests of the District. Work or portions of the Work may also be performed elsewhere.

5. SCOPE OF WORK:

This Solicitation is for retaining a year-round grocery distributor for the provision of broad-line grocery supplies and to receive, store, track inventory of, and distribute the District's commodity foods products to all of the District's kitchen locations, currently fifty-three (53), on a requirements basis. The District does not have a warehouse. See Section II and applicable attachments for additional details.

6. CONTRACT:

The successful Proposer, selected by the District, will receive a Master Price Services Contract. A sample of the Contract is enclosed herein (see SECTION V - ATTACHMENTS).

- a. Proposers are advised to thoroughly review and familiarize themselves with the standard contract. Certain contract terms reflect state statute and may not be altered.
- b. The Provider will be expected to promptly sign a contract including all standard terms and conditions contained in the sample Price Services Contract. The District will execute the Contract only after it has obtained all applicable required documents and approvals.

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- c. The District may, at its sole discretion, negotiate any contract terms suggested in Proposals and/or any other contract terms it finds to be in its best interest to negotiate. The forgoing does not limit the District’s right to terminate contract negotiations as provided under applicable rules/laws.

7. AMENDMENTS:

The District may amend a Contract without additional competition pursuant to OAR 137-047-0800.

8. CONTRACT PERIOD/EXTENSION:

- a. The selected Proposer will be issued a Contract effective upon full execution, through June 30, 2025
- b. Should the District elect to renew the Contract for an additional one (1) year term, the District will send correspondence to the Provider on or about 30 days prior to Contract End Date for each consecutive contract period.
- c. The District may elect to renew the Contract for a total of four (4) one (1) year terms.
- d. The Provider’s Pricing and Rates must remain firm for one (1) year and through June 30 of each contract period, when extended.

9. CONTRACT ADMINISTRATOR:

The Contract Administrator for the Master Price Services Contract will be the Nutrition Services Administrator, or designee.

10. DISTRICT REPRESENTATIVE:

The District Representative for the project is the Nutrition Services Purchasing Agent, or designee.

11. SOLICITATION SCHEDULE:

The milestones for the selection process are set forth below. The dates are specific and will be followed to the extent reasonably possible. The purpose of this schedule is for Proposer information only. The District reserves the right to deviate from this schedule.

SOLICITATION MILESTONES	COMPLETION DATE	TIME
Deadline for Equivalent Product Requests	November 30, 2023	1:00 PM PST
Deadline for Equivalent Product Samples*	January 25, 2024	1:00 PM PST
Final Price Schedule with all approved items will be posted by:	February 5, 2024	4:00 PM
Deadline for Questions	February 7, 2024	3:30 PM PST
Submit Proposals	February 15, 2024	2:00 PM PST

IMPORTANT:

Due to Thanksgiving Break equivalent product request documents must NOT arrive between November 20th, 2023 through November 24th, 2023.

Due to Winter Break samples must NOT arrive between December 18th, 2023 through January 1st, 2024.

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12. DEADLINE FOR EQUIVALENT PRODUCT SAMPLES*:

- a. *Upon the District’s request, Proposers must submit samples for all received Equivalent Product Requests (Attachment Q) by the deadline stated above. All equivalent product samples submitted under this RFP must be submitted as specified in this RFP (e.g., per acceptable delivery location, delivery time frames, delivery methods, etc.).
- b. Failure to deliver equivalent product samples to the District and/or failure to deliver equivalent product samples as specified on the District’s Equivalent Product Request form may lead to the rejection of the Proposal, the proposal would be marked as non-responsive to the Solicitation.
- c. It is essential to note that this process is separate from the process outlined in in Section II (21. SAMPLES OF PROSPECTIVE ITEMS), which applies after the contract award.
- d. Proposers are solely responsible for ensuring that the District receives the sample products.

13. CONTACT DURING SOLICITATION:

- a. Method of Inquiry: All inquiries and questions related to this solicitation must be submitted in writing via email to contracts@beaverton.k12.or.us as indicated on the summary page of this Solicitation.
- b. Point of Contact: Communications may be routed through contracts@beaverton.k12.or.us during the RFP process. While email communications are preferred. No other points of contact are authorized.
- c. External Communication: Other than the methods authorized above and herein, it is prohibited to engage in any form of communication with Beaverton School District employees, officials, or their representatives, regarding this RFP. This prohibition includes, but is not limited to, any attempts to influence or contact members of the evaluation team. Such conduct by the Proposer may result in the rejection of the proposal.

SECTION II – STATEMENT OF WORK
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SECTION A: BACKGROUND

1. PURPOSE AND INTRODUCTION:

This Solicitation is for retaining a year-round grocery distributor for the provision of broad-line grocery supplies and to receive, store, track inventory of, and distribute the District’s commodity foods products to all of the District’s kitchen locations, currently fifty-three (53), on a requirements basis. **The District does not have a warehouse.**

The District participates in various United States Department of Agriculture (USDA) programs including the National School Lunch Program (NSLP) and Summer Food Service Program (SFSP) as well as USDA Foods direct delivery and further processing programs. The District’s Nutrition Services department serves approximately twenty thousand (21,000) meals per day during the school year and provides meals to the community during the summer recess.

2. OPERATIONAL ATTRIBUTES:

- a. Provision of products and services are required twelve (12) months out of the year.
- b. The District has NO central warehouse or capacity to self-distribute items or orders and many kitchen locations lack storage capacity for more than one week of inventory.
 - i. Late deliveries and non-delivery of products have an inordinate impact on the operation of District kitchens. The ability to have timely, accurate information and the ability to communicate directly to the Provider’s representative is important to ensure the kitchens have what is needed to meet the cycle menu and National School Lunch Program (NSLP) meal pattern requirements. (Exhibit 5 has the staff start and end times)
- c. USDA Foods products comprise 95% of the District’s center of the plate items. The District orders these items directly from the manufacturer or supplier for delivery to the Provider. Therefore, the Provider must have suitable dry, cooler, and freezer space to handle USDA Foods inventory levels that ensure all USDA Foods products will be available without interruption during the year.

3. GENERAL SCOPE OF WORK:

- a. Timely, provision of commercial food and dry goods to all District kitchen locations, currently fifty-three, on a requirements basis. (See Exhibit 5 for District locations)
- b. Receive, store, track inventory of, and distribute to all District kitchen locations, USDA Foods products that the District procures for itself on a requirements basis utilizing District or State of Oregon contracts for further processing of USDA Foods and through USDA’s direct delivery program.
 - i. Distribution of USDA Foods products will occur concurrently with that of commercial products.

SECTION B: DETAILED SCOPE OF WORK - PROVISION OF COMMERCIAL PRODUCTS

- 1. PRODUCTS AND GENERAL SPECIFICATIONS.** The Provider must deliver only those items and brands awarded from this Solicitation, items added to the Contract via amendment, or District approved temporary substitutions. The following general specifications must be used on all products:
- a. Products sold to the District must be warranted and guaranteed resalable by the Provider.
 - b. No reworked products or culls shall be acceptable.
 - c. Where specified, all food items must meet USDA meal pattern requirements.
 - d. All food items considered creditable towards USDA meal pattern requirements and containing an

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agricultural component must meet the Buy American Provision of the National School Lunch Act or have been granted an exception by the District.

2. **BUY AMERICAN PREFERENCE DOCUMENTATION.** For all food items on the Contract or substitutes, the Provider will either provide documentation stating items meet the Buy American Provision, see the section Buy American Provision in the Sample Price Services Contract provided, (see Section V – Attachments) or request an exception by filling out a waiver request using Attachment - Waiver Request to Use Foreign Food Products (see Section V - Attachments). Requests will be approved at the District's sole discretion.
 - a. **Acceptable forms of documentation.** Acceptable forms of documentation are:
 - i. Statements of compliance from manufacturers.
 - ii. Product specification sheets stating the country of origin of the agricultural components and the percentage each of the components represents.
 1. Per the Buy American Provision fifty-one (51) percent of the agricultural components must be from the United States.
3. **ORDER VOLUME.** District minimum orders:
 - a. **School year minimum orders.** During the school year, the District will place orders for no less than 25 cases of product per location at one time.
 - b. **Summer program minimum orders.** For the duration of the summer meal service programs, the District will place orders for no less than 15 cases of product per location at one time.
 - c. **Additional order minimums.** **The Provider must not set additional order minimums in dollar** amounts or quantities. The District will on occasion request less than minimum orders, it is at the Provider's discretion whether or not to honor the request.
4. **ORDERING.** The District will order on a requirements basis.
 - a. **Provider representative.** The Provider must have a representative available to assist with ordering a minimum of eight (8) hours between the hours of 7:00 AM and 5:00 PM Pacific Time, Monday through Friday.
 - b. **Ordering system.** The Provider must provide an ordering system that accepts orders via email, in PDF, Microsoft Excel, CSV file formats, or accept orders via File Transfer Protocol (FTP), or a similar format that is compatible with the District's electronic Food Service Management System (FSMS). Orders from the District will include at minimum the Provider supplied customer number for each site, the District's site ID, vendor stock number, pack quantity ordered, and delivery date.
 - i. Provider must not require the District to manually, or verbally enter orders in a Provider's existing ordering system.
5. **SHORTAGES AND SUBSTITUTION(S) OF ITEMS ON DISTRICT ORDERS.** The Provider must provide a list of shortages with proposed substitutes no later than 10:00 AM Pacific Time, one (1) business day before the scheduled delivery date. The format for the list will be mutually agreed upon by the Provider and the District. The shortage list must contain at a minimum the following:
 - a. Ordered item
 - b. Provider's product identification number
 - c. Description and name of the products
 - d. Quantity being shorted
 - e. Name of Site(s) being affected by the shortage
 - f. Proposed substitute item(s)
 - i. Provider's product identification number

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- ii. Description and name of the products
 - iii. Quantity to be used as a substitute
 - iv. Brand name
 - v. Pack size
 - vi. Delivered price
- g. The order of precedence for products offered as substitutes must be:
- i. **Food items:** an item on the contract that has similar characteristics to the originally ordered item, a non-contract item that has similar characteristics and meets the same NSLP meal pattern crediting as the originally ordered item, a non-contract item that has similar characteristics as the originally ordered item.
 - ii. **Required documents for food items:** For all items not previously used as substitutes the following documents must be provided.
 - 1. CN Label or Product Formulation Statement
 - 2. Required for items containing ingredients that are creditable under USDA NSLP nutrition guidelines.
 - 3. Nutrition Facts
 - 4. Ingredients List
 - 5. Cooking instructions if applicable.
 - 6. Buy American Statement
 - iii. **Non-food items:** an item on the contract that has similar characteristics to the originally ordered item, a non-contract item that has similar characteristics as the originally ordered item.
6. **UNAUTHORIZED SHIPMENT/SUBSTITUTION.** In the event of an unauthorized shipment of product(s), the Provider will be responsible for recovering all items at no charge to the District.
- a. Credit for the unauthorized shipment of a product(s) must be issued within two (2) business days.
 - b. Failure to recover the items within twenty-one (21) calendar days may result in the product being disposed of in a manner decided by the District.
 - c. The Provider shall not bill the District for the disposed of product.
7. **ORDER SHIPMENT REQUIREMENTS.** For every order, the Provider must fill ninety-eight percent (98%) of the original order on the scheduled day of the delivery. The remaining two percent (2%) of the order must be delivered within one (1) business day of the scheduled delivery day, unless, at the District's sole discretion, a new delivery date is scheduled.
- a. Approved substitutions will count towards complete measurement and must be delivered on the designated delivery day.
 - b. Shortages on products will be counted as non-delivery and are subject to the provisions detailed in the DELAYED DELIVERY/NON-DELIVERY OF PRODUCTS clause below.
 - c. Expedited delivery is encouraged to fill shortages and back stocks, Provider must not charge the District additional delivery, service charges, or other fees when delivering back ordered or previously shorted items.
8. **EQUIPMENT.** The Provider shall be responsible for providing all delivery trucks, equipment, tools, and materials required to complete the Work for the term of the Contract. The Provider is solely responsible for keeping delivery trucks, equipment, and tools in good working order and appearance.
9. **DELIVERY DAYS.** The delivery days will be mutually agreed upon between the District and the Provider.

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10. **DELIVERY REQUIREMENTS.** The Provider must make deliveries to the District as requested throughout the school year and for the duration of summer programs. Deliveries must be made as needed, to multiple sites, and within the approved delivery window. A list of District schools/sites and addresses is attached as Delivery Location Information (see Section V – Attachments).
- a. **Potential work.** Work is to be performed on an as-needed basis, or as otherwise directed, at these sites and any future properties or interests of the District. The Provider must not limit the number of or location of delivery sites.
 - b. **Site visits.** It is the Provider's responsibility to conduct site visits to all delivery locations to familiarize their personnel with the conditions and delivery locations at each location.
 - c. **Sites with potential vehicle and pedestrian conflicts.** In instances where the delivery location at the school is such that the Provider's equipment may impact the safety of children, parents, and staff, or create a dangerous traffic situation during pick-up, drop-off, and meal periods, the Provider must NOT deliver within fifteen (15) minutes either side of the bell schedule, see Delivery Location Information (Section V – Attachments), for the start of school or end of school. Schools with these issues are noted in the attachment.
 - d. **Number of deliveries.** The Provider must provide deliveries at least once per week at all sites. Multiple delivery locations require twice-a-week delivery during the school year. The Provider must not limit the number of sites requiring twice weekly delivery.
 - e. **Summer delivery locations.** Delivery locations for the summer program will be determined by June 1 of each year of the Contract. The desired delivery day or days and number of delivery sites (the number and locations may vary from year to year) will be communicated by the District to the Provider at this time. The summer programs generally run from the week after school ends through the summer until the week before school starts. All summer delivery locations will be sites the Provider delivers to during the school year.
 - i. The Provider must not limit the number of deliveries for the summer program.
 - f. **Delivery window.** Delivery times during the school year must be between the hours of 6:00 AM and 2:00 PM Pacific Time.
 - g. **Summer delivery window.** Delivery windows during summer program operating dates will vary depending on site and year.
 - h. **Products.** The Provider must only deliver products and quantities of products ordered by the District Representative. Products must not be shipped or delivered until receipt of a District order.
 - i. **Out of specification products.** Products that do not meet specifications may be rejected, at the sole discretion of the District, and Provider must provide replacement of the rejected products within twenty-four (24) hours of the delivery date at no additional cost to the District.
 - j. **Proof of delivery.** The Provider must furnish proof of delivery for signature in every instance, and all deliveries must be accompanied by proof of delivery, see section PROOF OF DELIVERY AND INVOICING.
 - k. **Orders.** All orders must be delivered in a clean truck and organized for easy offloading and receipting. Stacked loads must be no higher than five (5) feet, with the heaviest of products on the bottom.
 - l. **Delivery staff identification.** The Provider must ensure all delivery staff wear a uniform and/or identification (ID) badge that identifies them as a representative of the Provider.
 - m. **Inside delivery.** The Provider must provide delivery inside the District school/location and must unload and place the product in the school/location as directed by the District.
 - i. Any cost incurred due to the failure of the Provider to comply with this requirement will be charged back to the Provider.
 - n. **Dry goods delivery.** All dry goods products must be delivered and placed inside dry goods storerooms on a first-in first-out basis.
 - o. **Frozen goods delivery.** All frozen products must be placed in freezers, and must be delivered in a frozen state between the temperature of zero (0) degrees Fahrenheit (F) and ten (10) F. This temperature

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range must be maintained during transit and delivery. A temperature above 10 degrees F is subject to further examination and may result in the rejection of the product. Products must show no signs of freezer burn, or evidence of thawing at the time of delivery.

- p. **Refrigerated goods delivery.** All products requiring refrigeration must be placed in coolers and must be delivered in a refrigerated state with an internal temperature not exceeding forty (40) degrees F. Refrigerated products must show no signs of freezing.
 - q. **Clean up.** The Provider must remove all debris and rubbish resulting from delivery off-site in a responsible manner. The premises must be left in a neat, unobstructed condition upon completion of the delivery.
 - r. **Deliveries during mealtimes.** If deliveries are made during mealtimes, the Provider must deliver the ordered goods into the appropriate storeroom/refrigerator/freezer for each site. The delivery slip must be marked, "Not Counted" and in the event of any discrepancies between the delivery slip and the actual count of items delivered, then the Provider shall be responsible for any shortages by bearing the cost of the missing items, and by sending replacement items within (1) one business day if it is determined the product cannot be reordered for the next scheduled delivery day.
 - s. **Late deliveries.** In the event of delivery outside of scheduled times, then the same conditions outlined above for deliveries during mealtimes shall apply.
 - t. **Recovery of rejected products.** If it is determined a rejected product cannot be reordered for the next scheduled delivery day the Provider shall replace the product within (1) one business day and at no cost to the District,
 - i. Failure to recover the rejected item(s) within twenty-one (21) calendar days may result in the product being disposed of in a manner decided by the District. The Provider shall not bill the District for the disposed of product.
 - u. **Emergency delivery.** The Provider must provide delivery for emergencies which may include, but are not limited to theft, product recall, refrigeration/freezer breakdown, and food spoilage. The Provider the emergency deliveries must occur within a time agreed upon between the District Representative and the Provider's representative.
 - v. **Condition of delivered product.** The Provider shall be responsible for the delivery of items in good condition to the point of destination. The receiving District representative will note for the benefit of the Provider when packages are not received in good condition.
11. **LATE DELIVERIES OR NON-DELIVERY.** The Provider must provide timely delivery of all orders to all District sites.
- a. **Notification of late delivery.** If the Provider is unable to deliver to any District site by 2:00 PM of a previously agreed upon scheduled delivery day, the Provider must notify the District Representative by phone or email, and the affected site(s) by phone, of the delay, and communicate all pertinent information.
 - b. **Changes in delivery time.** If there is a change in delivery time of more than thirty (30) minutes after the first communication of delay, the Provider must notify the District Representative and affected site(s).
 - c. **Arrangements for a late delivery.** At the District's discretion arrangements may be made for delivery after 2:00 PM of the scheduled delivery day.
 - d. **Refusal of a late delivery.** The District reserves the right to refuse a late delivery, refusal to receive the attempted late delivery must be at no charge to the District. Upon refusal, at the District's request, the Provider must redeliver the next business day before 10 AM or at the District's discretion, a mutually agreed upon date and time. Redelivery must be at no charge to the District.

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12. **HOLIDAY/SCHOOL CLOSURES.** The Provider must not deliver on legal holidays, days schools are closed, or closures for inclement weather.
13. **OFF-SCHEDULE DELIVERY DAYS.** The Provider must make provisions for off-scheduled delivery days around days schools are closed due to holidays, non-student days, or inclement weather events. These off-scheduled delivery days will be agreed upon by the District and the Provider and unless agreed to by the District, must occur within two (2) days, before or after, the normally scheduled delivery for the impacted sites.
14. **RECOVERY OF SHORTED, DAMAGED, INCORRECT ITEMS, AND ITEMS DELIVERED TO INCORRECT LOCATIONS.** Unless otherwise mutually agreed upon by the Provider and the District, the Provider at the District's request, shall recover within two (2) business days any errors related to shortages, damages, incorrect items, or items delivered to incorrect locations. Recovery must be completed at no additional cost to the District.
- a. Failure to recover damaged, incorrect items, and items delivered to incorrect locations within twenty-one (21) calendar days may result in the product being disposed of in a manner decided by the District. The Provider shall not bill the District for the disposed of product.
15. **PACKAGING.** All packaging must be wholesome, safe, and in sanitary condition in accordance with good commercial practice. Package size to be manufacturer's standard unless otherwise specified.
- a. Provider must ensure all cases, cartons, and containers are unblemished and sealed as received from the manufacturer.
 - b. Labeling of all containers must comply with Federal Food, Drug, Cosmetic Acts, and related legislation including the latest revisions.
 - c. Packaging must:
 - i. Protect the taste, aroma, visual, and other palatable properties measured by the senses and other quality characteristics of the product;
 - ii. Protect the product against microbiological and other contamination;
 - iii. Protect the product from dehydration;
 - iv. Not pass on to the product any odor, taste, color, or other foreign characteristics throughout the processing (where applicable), and distribution of the product up to the time of receipt by the District.
 - d. Packing containers must be constructed of recyclable materials wherever feasible, and where shipment within the recyclable container does not diminish the quality or sanitary requirements of the product.
 - e. Each packaging container must be labeled legibly to show:
 - i. Name of product contained
 - ii. Manufacturer's Product Number
 - iii. Net weight
 - iv. Expiration date, best by date, use by date
 - v. Cartons and carriers used to transport products from the Provider's facility must be clean and sanitary at all times in accordance with good commercial practice.
16. **PROOF OF DELIVERY AND INVOICING.** The District prefers electronic invoices.
- a. **Proof of delivery.** The Provider must provide proof of delivery documentation with each shipment, consisting of one (1) of the following: packing slip, bill of lading, or invoice. Unless otherwise agreed to by the District, proof of delivery must include at a minimum:
 - i. Document number
 - ii. Ship-to Location

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- iii. Ship date
 - iv. Provider's item number
 - v. Product description
 - vi. Quantity ordered
 - vii. Quantity delivered
 - viii. District Purchase Order (PO) number and/or District order number
 - b. **Invoice used as proof of delivery.** If an invoice is used as proof of delivery, the following additional information must also be included.
 - i. Invoice number
 - ii. Account Number
 - iii. Price per product
 - iv. Extended price per product
 - v. Total invoice amount
 - vi. Invoice date
 - c. **Shorted items.** The Provider must indicate on the proof of delivery whether shorted items are on back order, have been substituted, or whether the order is considered shipped complete without the shorted item.
 - d. **Invoicing.** Unless otherwise agreed to by the District, invoices must include at minimum:
 - i. Customer Number
 - ii. Bill to
 - iii. Ship to
 - iv. Account Number
 - v. District PO Number and/or District order number
 - vi. Distributer's Product Code
 - vii. Product Description
 - viii. Billed Quantity
 - ix. Price per product
 - x. Extended price per product
 - xi. Total invoice amount
 - xii. Invoice date
 - e. **Bill to address.** If invoices are not used as proof of delivery and left at the delivery location or provided electronically, invoices must be sent to the District's Nutrition Services Department, 10740 NE Walker Road, Entrance D1, Hillsboro, OR 97006, within two (2) days of the delivery date.
 - f. **Invoice format.** The District prefers electronic invoices. Invoices may be provided via email in PDF file format, or a mailed hard copy.
17. **MONTHLY STATEMENT.** The Provider must provide the District with a monthly statement (a list of all invoices and credits for the month) in Microsoft Excel file format. Unless otherwise agreed to by the District, the monthly statement must include at minimum the following information.
- i. Statement Date
 - ii. Invoice or Credit Date
 - iii. Invoice or Credit Number
 - iv. Invoice Amount
 - v. Payment Received Amount or Credit Amount

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18. **MONTHLY REPORT OF BILLED ACTIVITY.** The Provider must provide the District by 5.00 PM Pacific Time Friday of the first full week of each month, a report of billed activity for the previous month. The Provider must provide the report in Microsoft Excel file format, which, unless agreed to by the District, must include at minimum the following for each item shipped.
- a. Invoice or Credit Number
 - b. Ship To/Customer number
 - c. Ship To/Customer Name (school name)
 - d. Address
 - e. City
 - f. State
 - g. Zip Code
 - h. Item Number
 - i. Brand Id
 - j. Pack
 - k. Size
 - l. Item Description
 - m. Manufacturer Product Code
 - n. District PO Number
 - o. Pay by date
 - p. Shipped Quantity
 - q. Unit Price
 - r. Net Sales Dollars
19. **CREDITS/DEBITS.** The Provider will provide a mechanism for requesting credits and debits.
- a. **Photographs.** The Provider may request but cannot require photographs of products to process credits.
 - b. **Processing of credit and debit requests.** Credit/debit requests must be processed or disputed within thirty (30) days of the delivery date. Failure to process credits or debits within the required time frame will result in the District's refusal to entertain any disputes. Continued failure to process credits promptly may result in the District short-paying invoices in the amount of the requested credit(s). The Provider shall not impose a penalty, financial or otherwise for short-paying invoices under this clause.
20. **PRODUCT RECALL.** If a product recall is instituted on a product that has been delivered, the Provider must attempt to contact the District's Nutrition Services Central Office by telephone immediately, voicemails are not an acceptable means of communication.
- a. The Provider must communicate with at least one of the following Nutrition Services Central Office staff members.
 - i. Nutrition Services Administrator
 - ii. Nutrition Services Purchasing Agent
 - iii. Nutrition Services Administrative Assistant
 - b. Provider must **NOT** call individual District schools/sites.
 - i. The District will be responsible for contacting individual schools/sites affected by the recall.
 - c. Provider shall be responsible for all costs associated with the replacement of recalled items, shipping charges, and/or product credit.
 - d. If at any time it is determined that the health and/or safety of the District's customers are affected by the usage of a manufacturer recalled product, the Provider and/or Provider's supplier shall assume full liability.

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21. **SAMPLES OF PROSPECTIVE ITEMS.** Upon the District’s written request, samples must be provided to the District at no charge and delivered within one (1) week of request. If added to the Contract, sample items may be retained by the District to determine if the quality and workmanship of the delivered items are comparable to the sample submitted. All samples provided by the Provider not consumed in testing, or retained by the District, will be disposed of by the District.
22. **OREGON FARM TO CHILD NUTRITION PROGRAM GRANT PRODUCTS.** The District is a recipient of the State of Oregon’s Farm to Child Nutrition Programs Grant funds and will request the Provider to procure and distribute products that the District has identified as meeting the grant requirements and are not part of the Provider’s normal product offerings. All products will be added via amendment.
 - a. **Pricing.** The District will work with the product’s manufacturer/supplier and the Provider on pricing and distribution. Pricing provided directly to the District by the product’s manufacturer/supplier will be honored by the Provider. The Provider will add their markup to the price provided by the manufacturer/supplier. Unless otherwise agreed to by the District the markup will be comparable to the markup on all other products supplied by the Provider under this solicitation. All products will be added to the contract via amendment.
 - b. **Ordering and distribution.** Products brought in for the District for the Farm to Child Nutrition Program Grant will be used in their entirety by the District. The District will either provide an auto-ship list detailing delivery locations and quantities to deliver or sites will order the product utilizing the usual ordering process. Distribution will occur concurrently with the rest of the District’s orders. The District will use all inventory brought into stock specifically for the District.

SECTION C: DETAILED SCOPE OF WORK - USDA FOODS ORDERING, RECEIVING, INVENTORYING, STORAGE AND DELIVERY

1. **VALUE PASS THROUGH METHODS USED BY THE DISTRICT.** The District currently utilizes two (2) value pass through methods offered by USDA and reserves the right to use others.
 - a. **Fee for service, delivery to a distributor (FFS).** The District utilizes State of Oregon price agreements and maintains District contracts for further processing with multiple processors and places orders directly with the processor for delivery to the Provider.
 - b. **Direct delivery (DD).** The District orders USDA Foods DD products for delivery from the Oregon Department of Education Child Nutrition Program’s (ODE CNP) contracted warehouse to the Provider.
 - c. **Net of Invoice (NOI).** The District does not currently utilize NOI but reserves the right to do so.
2. **ORDERING OF USDA FOOD PRODUCTS FOR DELIVERY TO THE PROVIDER.** Except for NOI products, the District will place orders for all USDA Foods products for delivery to the Provider from either manufacturers, for further processed items, or from the state of Oregon’s contracted USDA Foods warehouse for direct delivery products.
 - a. **NOI.** In the event the District utilizes the NOI value pass through method, the Provider will be responsible for ordering the products identified as such.
 - i. The Provider must maintain adequate inventory levels of NOI products based on District usage.
 - 1) **Product availability.** If an NOI item is not available for shipment the Provider will offer a substitute equivalent item commercial item and will bill the District at a rate equivalent to or less than the per serving cost of the NOI item not including the value of the donated food. Equivalency is to be determined solely by the District.
 - l) The Provider shall not limit the number of NOI items the District utilizes nor shall the

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Provider set limits on order volumes for NOI items.

- 2) **District addition of or discontinuation of an NOI product.** In the event the District decides to add or discontinue an NOI product, the District will notify the Provider in writing.
 - 1) NOI products ordered by the Provider that are proprietary to the District will continue to be ordered until no inventory remains. If the Provider places and receives orders from their supplier for an NOI item proprietary to the District after the District notifies the Provider, the District shall not be required to order those order volumes.
- 3) **NOI Reporting requirements.** Due to USDA requirements for the District to manage purchases made utilizing the NOI value pass through method, the following is required in the event the District utilizes NOI.
 - 1) Provider must enter information into Processor Link, K-12, or any other system utilized by a manufacturer, within five (5) business days of the receipt of NOI items.
 - 2) The Provider must provide the District with all requested reports relating to NOI items within (5) business days.

- b. **Identification of USDA Foods products.** The Provider will provide product codes to the District that:
 - i. identify the products in the Provider's inventory and ordering system as being a USDA Foods product.
 - 1) Product codes must be provided within ten (10) business days of request by the District.
 - 2) Prior to the start of the term of the contract, the District will identify to the Provider what further processed items the District will be ordering and from which manufacturers, and what direct delivery items the District will be ordering through the ODE CNP USDA Foods warehouse.
 - c. **Yearly quantities ordered.** Upon request, prior to the start of each contract term, the District will provide estimates of yearly usage of further processed and DD products (see Beaverton SD Estimated USDA Foods Products For 2023-24 in Section V - Attachments).
 - i. The Provider shall not set minimum or maximum yearly quantities.
 - ii. The District does not guarantee the quantities indicated. The quantities listed herein represent the District's best estimates at the current time. However, the District's requirements may increase or decrease, and the District reserves the right to increase or decrease quantities at its sole discretion.
 - d. **Order quantities for delivery from processors and the state warehouse.** The Provider shall not place limitations on the quantities ordered by the District from processors for receipt into the Provider's warehouse. The District will determine the quantities required for each order.
 - i. The District intends to keep stock on hand at the Provider to a minimum, however, the District will determine, at the District's sole discretion, what the minimum stock on hand shall be.
 - ii. Minimum quantities shipped by processors may be out of the District's control and the District may be required to order volumes that will be available through most or all of the school year.
 - iii. USDA DD items are ordered up to 18 months before delivery and the timing of delivery is completely out of the control of the District and the District is required to take all product ordered. The District will make an effort to ensure the deliveries from the ODE CNP warehouse are spread out as much as possible.

3. ORDERING AND DELIVERY OF USDA FOODS PRODUCTS FROM THE PROVIDER.

- a. **District ordering of USDA Foods products.** The District will order USDA Foods items on a requirements basis and will be ordered and delivered at the same time as the commercial items the District orders from the Provider.
 - i. **Substitutions.** In the event the inventory of a USDA Foods product has been depleted, the Provider shall contact the District Representative by phone, email, or utilize the shortages report for

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instruction on what product(s) to use as a substitute. The Provider must not make substitutions without instructions from the District Representative.

- 1) Upon request the Provider will provide information and documents for substitutions as outlined in the clause SUBSTITUTIONS in section I. PROVISION OF COMMERCIAL PRODUCTS above.
- 2) The District reserves the right to return, and the Provider shall accept, any substituted items not pre-approved by the District Representative and any that are later found to not meet specifications. Expenses for the recovery of said products including the cost of the product will be borne solely by the Provider.

b. **Delivery of USDA Foods products from the Provider to the District.** The Provider shall deliver all USDA Foods products ordered by the District at the same time as commercial items.

- i. USDA Foods products will be on the same proof of delivery and invoices as commercial items.

4. **RECEIVING OF USDA FOODS PRODUCTS BY THE PROVIDER.** The Provider will be the receiving entity for all further processed and DD products that the District orders and will be responsible for unloading all orders promptly.

a. **Receiving purchase order (PO).** The Provider will issue a receiving PO and communicate it to the District Representative and the consignor.

- i. The PO will be issued within two (2) business days of receiving an expected delivery date from the consignor.

b. **Delivery appointments.** The Provider will coordinate delivery appointments with manufacturers or the manufacturer's contracted freight company. Deliveries must occur within seven (7) calendar days of the requested delivery date.

c. **Equipment and personnel.** Any equipment and/or labor required to accomplish the unloading of orders shall be furnished by the Provider at no additional cost to the District or to the State of Oregon's contracted carrier delivering DD products.

- i. **Lumpers, lumper fees.** The Provider must not require the use of lumpers and lumper fees must not be charged by the Provider for any deliveries of USDA Foods delivered from the state warehouse by ODE CNP's contracted carrier.

- 1) Lumper fees are not allowed per USDA Food and Nutrition Services Instruction 709-5 Rev 3.

d. **Receiving paperwork.** The Provider will provide the District with copies of all receiving paperwork from each delivery the Provider receives on the District's behalf.

- i. Receiving paperwork must include a copy of the Bill of Lading or Packing List signed by a representative of the Provider and must indicate quantities received, note any shortages, and note any damages.

- ii. Receiving paperwork MUST be provided within three (3) business days of receiving the order.

e. **Receiving DD products.** The carrier delivering USDA Foods Direct Delivery products is contracted through ODE CNP therefore the District has no control over how the USDA Foods Direct Delivery items are palletized. Thus, the ODE CNP contracted carrier must not be required to re-palletize or re-package in any way for drop-off/ delivery to meet the requirements of the Provider's system.

5. **INVENTORY.** The Provider must maintain an accurate physical inventory of USDA Foods products owned by the District.

a. **USDA Foods Inventory Report.** The Provider must provide the District with a report stating inventory quantities in a Microsoft Excel file format of FFS and Direct Delivery products every week to the District Representative, and every month to the Nutrition Services Accountant. The District will provide the Provider with the District's report template. The report will include at a minimum:

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- i. Provider's item numbers
 - ii. District's item numbers
 - iii. Provider's product descriptions
 - iv. Name of processor
 - v. Case/pack size
 - vi. PO number of most recent order received by the Provider
 - vii. Number of Cases of each USDA Foods product most recently received by the Provider
 - viii. Date each product was received
 - ix. Quantity shipped to the District since the issuance of the previous report
 - x. Quantity shipped to the District since the start of the current school year
 - xi. Quantity of cases on hand since issuance of the previous report
 - xii. Quantity of cases currently on hand
- b. **Changes to the USDA Foods Inventory Report.** The District reserves the right to modify the USDA Foods Inventory Report at any time.
- c. **Missing or Damaged USDA foods items.** The Provider must compensate the District the full value of a product, value as determined by the District, for any missing or damaged cases that occur after the items are accepted by the Provider and before they are checked in at a District delivery location.
- d. **Physical Inventory.** The Provider must, at minimum, perform a physical count of the quantity in inventory of all USDA Foods products once per school year, within thirty (30) days of the end of the school year, and provide a report detailing the results of the physical inventory.
- i. At the District's sole discretion, a request to change what constitutes a physical inventory may be entertained.
 - ii. Physical inventory results must be communicated to the District Representative within five (5) days of completion and must include at minimum:
 - 1) Distributer's Product Code
 - 2) Manufacturer's Product Code
 - 3) Product Description
 - 4) Book quantity (quantity showing in the Provider's inventory management system)
 - 5) Physical quantity (quantity counted in the warehouse).
 - 6) Variance between Book and Physical quantities
- e. **Reimbursement for products with negative physical inventory variances.** Within thirty (30) days of completion and the District's acceptance of the physical inventory results, the Provider must reimburse the District for the full cost of any products with a negative variance. The full cost includes the value of donated food, processing fees, delivery fees from the processor (if not included in processing fees), and ODE CNP administrative fees.
6. **YEARLY AUDIT.** USDA requires all Recipient Agencies to perform a yearly audit of facilities warehousing all USDA Foods products owned by Recipient Agencies. The Provider must provide the District access to all facilities warehousing USDA Food products the District holds title to with a minimum of (48) forty-eight-hour notice.
7. **PICK UP OF USDA FOODS BY THE PROVIDER.** At the start of the initial contract period and to be completed prior to the Provider's first deliveries to the District, the Provider must pick up all USDA Foods products from the District's previous Provider and will bill the District the per case fee charged for delivery of USDA foods products to the District's locations.
- a. The Provider shall be responsible for making all arrangements for the pickup of the product and ensuring it is completed prior to the start of the school year.
 - b. At the District's discretion, the District may require the pickup of products the District will be using for

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the Summer Food Service Program, these products may need to be picked up the first week of July to ensure availability for orders delivered the second week of July and beyond.

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SECTION III – INSTRUCTIONS TO PROPOSERS
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1. **FORMAL SELECTION PROCEDURE:** Pursuant to OAR 137-047-0260
The District may procure Goods or Services by competitive sealed Proposals as set forth in ORS 279B.060.
2. **PRE-PROPOSAL CONFERENCE:** Pursuant to OAR 137-047-0420
 - a. **Purpose.** The District may hold pre-proposal conferences with prospective Proposers prior to closing, to explain the procurement requirements, obtain information, and/or to conduct site inspections.
 - b. **Required Attendance.** If the District's pre-proposal conference is mandatory (as indicated a Proposal submitted by a Proposer who did not attend the mandatory pre-proposal conference will be rejected.
 - c. **Statements Not Binding.** Statements made by the District's representative at the pre-proposal conference do not change the Solicitation document unless the District confirms such statements with a written Addendum.
3. **PROPOSALS ARE OFFERS:** Pursuant to OAR 137-047-0310
A Proposal submitted in response to this Solicitation is the Proposer's offer to enter into a Contract.
 - a. By signing and submitting a Proposal, the Proposer acknowledges it has read, understands and agrees to be bound by the terms and conditions contained in this Solicitation.
 - b. The Proposal is a "firm offer," and shall remain open for a period of sixty (60) days for acceptance by the District.
 - c. The District's Award of a Contract constitutes acceptance of the Proposal and binds the Proposer to the Contract.
 - d. The Proposer must not make its Proposal contingent upon the District's acceptance of any terms or conditions including Specifications, other than those explicitly stated in this Solicitation.
4. **PROPOSAL PREPARATION:** Pursuant to OAR 137-047-0400
A Proposer must sign and submit its Proposal in accordance with the instructions set forth in this Solicitation. Failure to submit Proposals in accordance with the provisions of this Solicitation will be grounds to declare the Proposal as non-Responsive. Proposers must:
 - a. Submit a complete Proposal (a Proposal that meets all requirements of this Solicitation);
 - b. Provide the District with all required and requested documents and descriptive literature;
 - c. Initial any corrections or erasures to their Proposal prior to closing;
 - d. Identify (on the Proposer Certification) whether the Proposer is/is not a "resident Proposer", as defined in ORS 279A.120(1);
 - e. Provide (on the Proposer Certification) certification of nondiscrimination in obtaining any required subcontractors in accordance with ORS 279A.110(4); and
 - f. Provide (on the Proposer Certification) Written acknowledgment of receipt of all Addenda.
5. **PROPOSAL SUBMISSION:** Pursuant to OAR 137-047-0410
 - a. To ensure proper identification and handling, Proposals must be submitted appropriately marked with the Proposer's name and the Solicitation number clearly legible in large block numbers. Proposals must be emailed to contracts@beaverton.k12.or.us, Facsimile and hard copy Proposals will not be accepted.
 - b. The District is not responsible for Proposals submitted in any manner, format or to any delivery point other than as required in this Solicitation.
 - c. Proposers are solely responsible for ensuring that the District receives their Proposal at the required delivery point prior to Closing.

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6. **ADDENDA:** Pursuant to OAR 137-047-0430
- a. **Issuance; Receipt.** The District may change this Solicitation only by Written Addenda. A Proposer must provide written acknowledgement of receipt of all issued Addenda in the space provided on the Proposer Certification.
 - b. **Notice and Distribution.** The District will publish notice of any and all Addenda on the Oregon Buys website. Addenda may be downloaded from the Oregon Buys website. It is the Proposers' responsibility to inquire about Addenda. Proposers should frequently check the Oregon Buys website until the Solicitation Closing (due date and time) about any Addenda issued, i.e., at least once weekly until the week of Closing and at least once daily the week of the Closing.
 - c. **Timelines; Extensions.** The District will issue Addenda within a reasonable time to allow prospective Proposers to consider the Addenda in preparing their Proposal. The District may extend the Closing if the District determines prospective Proposers need additional time to review and respond to Addenda. Except to the extent required by public interest, the District will not issue Addenda less than 72 hours before the Closing unless the Addendum also extends the Closing.
 - d. **Request for Change or Protest.** Unless a different deadline is set forth in the Addendum, a Proposer may submit a Written request for change or protest to the Addendum, as provided in OAR 137-047-0730, by the close of the District's next business day after issuance of the Addendum, or up to the last day allowed to submit a request for change or protest under OAR 137-047-0730, whichever date is later. If the date established in the previous sentence falls after the deadline for receiving protests to the Solicitation Document in accordance with OAR 137-047-0730, then the District may consider a Proposer's request for change or protest to the Addendum only, and the District will not consider a request for change or protest to matters not added or modified by the Addendum.
7. **QUESTIONS/CLARIFICATIONS/CHANGES AND SOLICITATION PROTEST:**
- Proposers may request changes or clarifications to, or protest, any provision, specification or Contract term contained in this Solicitation:
- a. **Questions, Clarifications, Changes.** All questions regarding this Solicitation must reference the Solicitation number and must be submitted in writing via e-mail to Contracts@beaverton.k12.or.us
 - i. No oral questions will be accepted other than at the pre-Proposal conference (if any). Questions received by the District prior to deadline will be answered in written addenda.
 - b. **Protest.** Pursuant to OAR 137-047-0730, a prospective Proposer may protest the procurement process or the Solicitation document for a Contract solicited under ORS 279B.060 as set forth in ORS 279B.405. Written protests must include:
 - i. A detailed statement of the legal and factual grounds for the change, clarification, or protest;
 - ii. A description of the resulting prejudice to the Proposer; and
 - iii. A statement of the form of relief requested or any proposed changes to the Solicitation provisions, specifications, or contract terms and conditions.
 - iv. Written protests must be clearly marked with the Solicitation number and submitted in writing to the Purchasing Manager by email to contracts@beaverton.k12.or.us, hand delivered or mailed to the attention of Purchasing at 1260 NW Waterhouse Ave, Beaverton, OR 97006.
 - c. **Deadline.** Questions, changes, clarifications, or protests must be received by the District as stated in Section I - SOLICITATION SCHEDULE. The District will not consider any protest or request for change that is submitted after the submission deadline.
 - d. **Response.** Responses to questions/clarifications and notice of the District's protest determination will be provided in written addenda pursuant to ADDENDA above. The District's response to a Proposer, whether orally or in Writing, does not change the Solicitation and is not binding on the District unless the District amends the Solicitation by written Addendum. Protesters must exhaust all administrative remedies before seeking judicial review.

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8. **PRE-CLOSING MODIFICATION OR WITHDRAWAL OF PROPOSALS:** Pursuant to OAR 137-47-0440
A Proposer may modify or withdraw its Proposal in Writing only prior to Closing. Modification or withdrawal must:
- a. Be clearly marked “Proposal Modification” or “Proposal Withdrawal” and marked and delivered as described in PROPOSAL SUBMISSION above;
 - b. Include the Proposer's statement that the modification amends and supersedes the prior Proposal; Proposers are responsible for ensuring that the District receives its modification or withdrawal.
 - c. Modifications and/or withdrawals must be prepared and submitted on the Proposer's letterhead, signed by an authorized representative of the Proposer.
9. **RECEIPT, OPENING, AND RECORDING OF PROPOSALS:** Pursuant to OAR 137-47-0450
- a. **Receipt of Proposals.**
 - i. Proposers are responsible for ensuring that the District receives the Provider's Proposal at the required delivery point prior to the closing due date and time.
 - ii. Proposals must be emailed to contracts@beaverton.k12.or.us and received prior to the Closing due date and time.
 - b. **Identification of Proposals.**
 - i. To ensure proper identification and handling, the proposals must be submitted to the email address listed above and the email subject line should include the Proposer's Company Name and the Solicitation number, and/or other clearly identifying information.
 - ii. The District is not responsible for proposals submitted in any manner, format or to any delivery point other than as required in the Solicitation.
 - iii. Failure to submit Proposals in accordance with the provisions of this section will be grounds to declare the Proposal as nonresponsive.
10. **LATE PROPOSALS, LATE WITHDRAWALS, AND LATE MODIFICATIONS:** Pursuant to OAR 137-47-0460
Any Proposal received after Closing is late. A Proposer's request for withdrawal or modification of a Proposal received after Closing is late. The District will not consider late Proposals, withdrawals or modifications except as permitted in MISTAKES below. The District reserves the right to consider Proposals that have been delayed or mishandled by the District.
11. **MISTAKES:** Pursuant to OAR 137-47-0470
To protect the integrity of the competitive Procurement process and to assure fair treatment of Proposers, the District will carefully consider whether to permit waiver, correction or withdrawal of Proposals for certain mistakes. The District will not allow a Proposer to correct or withdraw a Proposal for an error in judgment. If mistakes in a Proposal are discovered after Opening, but before Award of the Contract, the District may take the following action:
- a. The District may waive, or permit a Proposer to correct, a minor informality. A minor informality is a matter of form rather than of substance that is evident on the face of the Proposal, or an insignificant mistake that can be waived or corrected without prejudice to other Proposers.
 - b. The District may correct a clerical error if the error is evident on the face of the Proposal, or other documents submitted with the Proposal, and the Proposer confirms the District's correction in writing.
 - c. The District may permit a Proposer to withdraw a Proposal based on one or more clerical errors in the Proposal only in accordance with OAR 137-47-0470(2)(c) and (d).
 - d. The District will reject any Proposal in which a mistake is evident on the face of the Proposal and the intended correct Proposal is not evident or cannot be substantiated from documents accompanying the Proposal.

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12. **AWARD:** Pursuant to OAR 137-47-0600

- a. Award in part or in whole is contingent upon available funding. In the event adequate funds are not appropriated and allocated by the School Board, the District reserves the right to cancel any Solicitation at no penalty.
- b. If awarded, the District will award a Master Trade Services Contract to the Responsible Proposer(s) that submitted the most advantageous responsive Proposal(s), and that meets the minimum requirements of this Solicitation.
- c. The District may award by item, groups of items or the entire Proposal.
- d. The District may Award multiple Contracts if beneficial to the District for adequate availability, delivery, service, competition, pricing, product capabilities, or other factors deemed significant by the District. This notice of Multiple Awards does not preclude the District from awarding a single Contract.
- e. The District may award a Contract for parts of the Solicitation for which acceptable Proposals have been received.
- f. The District may award all or none Offers if the evaluation shows an all or none Award to be the most Advantageous or in the best interest of the District.
- g. The District may reject all or part of Proposals and may issue a new Solicitation on the same or revised terms, conditions and Specifications.
- h. When Proposals are identical the District must Award the contract Pursuant to OAR 137-046-0300.

13. **NOTICE OF INTENT TO AWARD:** Pursuant to OAR 137-047-0610

The District will provide a written Notice of Intent to Award (NOI) to all Proposers at least seven (7) calendar days before the Award of a Contract, unless the District determines that circumstances require prompt execution of the Contract. The District's Award will not be final until the later of the following:

- a. SEVEN (7) calendar days after the date of the NOI, or
- b. Until the District provides written response(s) to all timely filed protest(s) denying the protest(s) and affirming the Award.

14. **PROPOSAL REJECTION.** Pursuant to OAR 137-047-0640 and OAR 137-047-0650

- a. The District may reject any Proposal as set forth in ORS 279B.100:
 - i. When the rejection is in the best interest of the District.
 - ii. When the Proposal is contingent upon the District's acceptance of terms and conditions (including Specifications) that differ from the Solicitation.
 - iii. When the Proposal takes exception to terms and conditions (including Specifications) set forth in the Solicitation.
 - iv. That attempts to prevent public disclosure of matters in contravention of the terms and conditions of the Solicitation or applicable law.
 - v. That fails to meet the Specifications of the Solicitation.
 - vi. That is submitted late.
 - vii. Not in substantial compliance with the Solicitation or with all prescribed public procurement procedures.
 - viii. Not in compliance with ORS 279B.120, 279B.130, OAR 137-046-0210(3), 279A.105, ORS 279A.110(4).
 - ix. When the Proposer is not Responsible pursuant to ORS 279B.110.
- b. The District may reject all Proposals as set forth in ORS 279B.100. The District will notify all Proposers of the rejection, along with the reasons for rejection. Proposals may be rejected based upon the following criteria:
 - i. The content of or an error in the Solicitation or the Procurement Process unnecessarily restricted competition for the Contract.
 - ii. The price, quality or performance presented by the Proposers are too costly or of insufficient quality to justify acceptance of any Proposal.

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- iii. Misconduct, error, or ambiguous or misleading provisions in the Solicitation threaten the fairness and integrity of the competitive process.
- iv. Causes other than legitimate market forces threaten the integrity of the competitive process, such as collusion, corruption, unlawful anti-competitive conduct, and/or inadvertent or intentional errors in the Solicitation.
- v. The District cancels the Solicitation in accordance with OAR 137-047-0660.
- vi. Any other circumstance indicating that awarding the Contract would not be in the public interest.

15. SOLICITATION CANCELLATION: Pursuant to OAR 137-047-0660

The District may cancel, delay or suspend a solicitation, or reject all Proposals, in accordance with ORS 279B.100 when it is in the best interest of the District as determined by the District. In the event of any such cancellation, delay, suspension or rejection, the District is not liable to any Proposer for any loss or expense caused by or resulting from any such cancellation, delay, suspension or rejection.

16. PROPOSAL COSTS:

Proposers responding to solicitations are responsible for all costs they may incur in connection with submitting Proposals.

17. CONTRACT AWARD PROTEST: Pursuant to OAR 137-047-0740

- a. Proposers may protest the Award of a Contract, or the intent to Award a Contract if the conditions set forth in ORS 279B.410(1) are satisfied. Proposers must deliver a written protest to the District within seven (7) Days after the issuance of the NOI.
- b. The Proposer's protest must be in writing and must specify the grounds for the protest to be considered by the District pursuant to ORS 279B.410(2). A protest must be submitted to the Purchasing Manager and may be e-mailed to contracts@beaverton.k12.or.us, or hand delivered or mailed to 16550 SW Merlo Rd, Beaverton, OR 97003. The Proposer is responsible for ensuring the District receives the protest.
- c. The District will not consider any protest that is submitted after the submission deadline.
- d. Resolution of Protests. The District's Purchasing Manager will settle or resolve a written protest submitted in accordance with the requirements of this Rule and will issue a written decision on the protest in a timely manner as set forth in ORS 279B.410(4).
- e. Decision. If a protest is not settled, the Superintendent, or designee, has the authority to resolve the protest.
- f. Proposers must exhaust all administrative remedies before seeking judicial review. Judicial review of this decision will be in accordance with ORS 279B.415.
- g. If the District upholds the protest, in whole or in part, the District may in its sole discretion either Award the Contract to the successful Protestor or cancel the Procurement or Solicitation.

18. ADDITIONAL REQUIREMENTS:

- a. The District reserves the right to seek clarifications of submitted Proposals, which may or may not affect the evaluation scoring.
- b. The District reserves the right to negotiate a final Contract that is in the best interest of the District.
- c. Failure of the District to insist on strict performance will not constitute a waiver of any of the provisions of this Solicitation or resulting Contract or waiver of any other default of the Proposer.

SECTION III – INSTRUCTIONS TO PROPOSERS

Solicitation No: RFP 23-0007

Broadline Groceries and the Storage and Distribution of USDA Foods Products

19. CONFIDENTIALITY OF PROPOSALS:

The District is subject to the Oregon Public Records Law (ORS 192.410 to 192.505), which requires the District to disclose all records generated or received in the transaction of District business, except as expressly exempted in ORS 192.501, 192.502, or other applicable law. The District may withhold from disclosure confidential information pursuant to ORS 192.501 or 192.502.

- a. The District will not disclose records submitted by a Proposer that are exempt from disclosure under the Public Records Law, subject to the following procedures and limitations.
 - i. All pages containing the records exempt from disclosure must be marked “confidential” and segregated in the following manner:
 - A. It must be clearly marked in bold and on each page of the confidential document.
 - B. It must be kept separate from the other Proposal documents in a separate envelope or package and electronic folder.
 - C. Where this specification conflicts with other formatting and response instruction specifications, this specification will prevail.
 - D. Where such conflict (in C. above) occurs, the Proposer is instructed to respond with the following: “Refer to confidential information enclosed.” This statement “Refer to confidential information enclosed.” must be inserted in the place where the requested information was to have been placed.
- b. Proposers who desire that additional information be treated as confidential must mark those pages as “confidential”, cite a specific statutory basis for the exemption, and the reasons why the public interest would be served by the confidentiality. The entire Proposal must not be marked confidential. Should a Proposal be submitted in this manner, no portion of it will be held as confidential unless that portion is segregated in the above manner and meets the above criteria.
- c. Notwithstanding the above procedures, the District reserves the right to disclose information that the District determines, in its sole discretion, is not exempt from disclosure or that the District is directed to disclose by the District Attorney or a court of competent jurisdiction. Prior to disclosing such information, the District will notify the Proposer. If the Proposer disagrees with the District decision, the District may, but is not required to, enter into an agreement not to disclose the information so long as the Proposer bears the entire cost, including reasonable attorney’s fees, of any legal action, including any appeals, necessary to defend or support a no-disclosure decision.

SECTION IV – RESPONSE AND EVALUATION

Solicitation No: RFP 23-0007

Broadline Groceries and the Storage and Distribution of USDA Foods Products

1. INTRODUCTION:

This section prescribes the mandatory format for the presentation of a Proposal in response to this Solicitation. The purpose of this format is to ensure uniformity of the information from each Proposer and to aid in clear understanding and evaluation of each Proposal. Failure to provide any information requested in this Solicitation may result in rejection of the Proposal.

2. PAGE LIMIT AND PROPOSAL FORMAT:

A Proposer's submitted Proposal:

- a. Should be submitted in searchable MS Word/pdf format to contracts@beaverton.k12.or.us. Elaborate artwork and visuals are not necessary. Any MS Excel attachments may be submitted in MS Excel format. Brochures or other promotional presentations beyond that sufficient to present a complete and effective Proposal are not desired.
- b. The Proposer's response is limited to 15 digital pages. This page limit is limited to the Proposer's response to the detailed proposal content requirements found in Section A below, unless specific items required therein are excepted from this page restriction (e.g., insurance forms). It is important to note that the page limit does not include **Attachments A through S or the evaluation sections**. Should a proposal exceed the specified page limit, the District reserves the right to consider excluding pages, starting with the last page of the submission and continuing until the 15-page threshold is met. In the event that this action is taken, it will be applied uniformly to all Proposals that exceed the established page limit.
- c. Proposal should be organized in the order items appear in the below item number 3. PROPOSAL CONTENT REQUIREMENTS.

3. PROPOSAL CONTENT REQUIREMENTS/GUIDELINES:

- a. Proposers must present a Proposal containing the specific information requested and submit all attachments as required on the Proposal Submission Checklist.
- b. Proposers are cautioned to provide in their Proposals, in a brief and concise manner, as much detail as possible pertaining to their capabilities and experience in providing the services requested in this Solicitation. Do not assume the District has any prior knowledge of the Proposer.

SECTION A: DETAILED PROPOSAL CONTENT REQUIREMENTS:

1. **INSURANCE REQUIREMENT.** (Pass/Fail)

- a. *Pages do NOT count towards the total proposal page count.*
- b. Provide a statement of agreement to the insurance clause in the sample Master Price Agreement (see SECTION V – ATTACHMENTS).

2. **SIGNED BUY AMERICAN STATEMENT OF UNDERSTANDING.** (Pass/Fail)

- a. *Pages do NOT count towards the total proposal page count.*
- b. Provide a signed Buy America Statement of Understanding and Responsibility and intention to offer food products that comply with the requirements of 7 CFR §210.21(d) Procurements (210.21(d), the Buy American Provision) (see Buy American Provision for the entire wording of the provision) and the guidance offered in USDA Memo SP 38-2017 Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program (See USDA Memo SP 38-2017 for the entire memo).

SECTION IV – RESPONSE AND EVALUATION

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Broadline Groceries and the Storage and Distribution of USDA Foods Products

3. **PRICE SCHEDULE.**

- a. *Pages do NOT count toward the total proposal page count.*
- b. Proposer must use the provided Price Schedule (see SECTION V – ATTACHMENTS) and must submit the Price Schedule in Microsoft Excel file format. Additional notes may be made at the bottom of the schedule by the Proposer if necessary.
- c. Pricing will be compared among all responsive Proposals submitted. The lowest overall priced proposal will receive the full points available. All other proposal pricing scores must be weighted against the lowest price proposal (Lowest price scores the highest. All other higher priced proposals are weighted against the lowest priced proposal).
- d. In the event of a difference between written words and figures, the amount stated in written words shall govern. In the event of a difference between a unit price and the extended price, the unit price shall govern.
 - i. Pricing must consist of.
 - 1) The manufacturer’s pricing to the proposer, net of all discounts, rebates, etc.
 - 2) The proposer's mark-up shall be added to the manufacturer’s pricing totaling the price per item the District will be charged.
 - 3) Pricing must be exclusive of federal, state, and local taxes. If the Proposer believes that certain taxes are payable by the District, the Proposer may list such taxes separately, directly next to the unit price for the affected item.
 - ii. All Proposed pricing must be Free-on-Board (FOB) to the District.
 - iii. Pricing will be compared among all responsive Proposals submitted.
 - 1) All products extended prices will be summed. The Proposal with the lowest sum of extended prices will be awarded the maximum points available under this section.
 - 2) Each proposal will be awarded a portion of the maximum points available under this section. The portion of the points awarded will be based on how much higher each Proposal’s sum of extended prices is than that of the lowest responsive Proposal. Higher priced Proposals will receive a smaller proportion of the maximum available points than lower priced Proposals.
- e. **Specifications.** The specifications contained herein reflect items that have been purchased in the past or are of known quality and acceptable to the District. See Section V – Attachments, Price Schedule for specifications pertaining to each item. General specifications for all items are located in Section II – Statement of Work, PRODUCTS AND SPECIFICATIONS. When manufacturers' names, item numbers, trade names, make, model, or catalog numbers are used in the specifications, they are for the purpose of describing and establishing general product attributes and quality levels. Such references are not intended to be restrictive. Where noted “or equal” in the Price Schedule, equivalent products may be proposed. The Equivalent Product Request Process detailed in the Exhibit - Equivalent Product Request Process must be followed for any/all equivalent products to be considered.
 - i. Only one (1) item per proposal item may be submitted for evaluation, including Equivalent Items.
 - ii. Submitting more than one (1) Equivalent product request per Price Schedule product may result in rejection of the Proposal.
- iii. **Proposers MUST propose on all products.**
 - 1) Proposals that do not include all products may be found non-responsive.
- iv. **Instructions and explanation of the Price Schedule.**
 - 1) **BSD Price Schedule Category Name:** Category grouping used by the District
 - 2) **RFP Item #:** Number used to identify each proposal item.
 - 3) **BSD #:** The District’s internal item number for the specified item.
 - 4) **Item: The name used by the District to identify the individual item.**
 - 5) **Specification:** The specifications for the individual items.
 - 6) **Specified Brand/Item:** The pre-approved proposal item’s brand and manufacturer’s code.
 - 7) **Approved Pack Size:** The pre-approved pack size.

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- 8) **BSD Est Usage 24-25:** Estimated usage for the 24-25 school year.
- 9) **Brand:** Brand being proposed.
- 10) **Manufacturer's Product Code:** Manufacturer's product code of the brand being Proposed.
- 11) **Distributor's Code:** The number by which the District would use to place orders if the Proposer was awarded the Contract.
- 12) **Pack Size:** How the product is packaged
 - I) Example: 4/10 lb.
 - II) Example: 500 Ea.
 - III) Example: 160/1 oz
- 13) **Portion Size.** individual portion size in fluid ounces, ounces, or grams.
 - I) Leave blank for non-food items.
- 14) **Portions per Case or Eaches per Case.**
 - I) **MUST** be a whole number.
 - II) Food items
 - a) provide the number of portions per case.
 - III) Non-food items
 - a) provide the number of each per case.
 - b) Example. if the case contains four (4) sleeves of 250 cups, then the each per case would be 1,000.
 - c) Example. if the case contains four (4) one (1) gallon containers, then the each would be four (4).
- 15) **Manufacturers Cost.** the amount the proposer will pay the manufacturer, net of all discounts, and incentives the proposer will receive.
- 16) **Mark Up/Fixed Fee Per Case.** The dollar amount the Proposer will be adding to the Manufacturer's Cost. Cannot be a percentage. *This does NOT have to be the same for all items.*
- 17) **Total Cost per Case.** The sum of the Manufacturer's Cost and the Fixed Fee Cost. This is what the District will pay the awarded Proposer per case.
- 18) **Cost per Portion or Each.** Total Cost per Case/Portions or Eaches per Case. **POINTS WILL BE AWARDED BASED ON THIS DOLLAR AMOUNT.**
- 19) **Extended Cost.** BSD Est Usage times the Total Cost per Case.
- 20) **Meets Buy American Y/N.** Does this product offered meet the Buy American Provision?
 - I) If YES, provide a statement from the manufacturer stating the product or THEIR products meet the Buy American **Provision (see Evaluation Criteria BUY AMERICAN STATEMENT OF COMPLIANCE AND NOTIFICATION OF FOREIGN PRODUCTS)**.
 - II) If NO, complete a Waiver Request to Use Foreign Products, See Attachment Waiver Request to Use for Products
- 21) **Equivalent (Y)** – If the product being offered is an equivalent item mark “Y”. If the item being offered is the specified item leave this blank.
 - I) If an equivalent product is being offered the Equivalent Product Request Process must be followed. **See Exhibit Equivalent Product Request Process.**
 - II) **This MUST be completed prior to the submission of the completed Proposal.**
- 22) **Oregon Item (Y).** Identify any food item **grown or processed** in the State of Oregon by marking “Y”. Leave blank if the item is not produced in Oregon.

4. **SPECIFIED AND EQUIVALENT ITEMS.**

- a. *Pages do NOT count towards the total proposal page count.*
- b. See Attachment - Substitute/Equivalent Product Request Process for the correct process to use for requesting the evaluation of substitute/equivalent items.

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- c. Items submitted via the Equivalent Product Request Process and determined to be equivalent will be added via an addendum to the PRICE SCHEDULE as specified items.
- d. Only one (1) substitute/equivalent item request per proposal item from each Proposer will be accepted.
- e. Submission of more than one substitute/equivalent item for evaluation may result in all submitted items being found NOT equal.
- f. Specifications and specified items are in the Attachment - Price Schedule.
- g. Each product has the possibility of 1 point.
- h. If the item being offered is the specified item, the full 1 point will be awarded.
- i. If an equivalent item is being offered points will be awarded as follows.
 - i. Equivalent items offered following the Substitute/Equivalent Product Proposal Process and determined to be equal to the specified item – 1 point is possible.
 - ii. Equivalent items offered following the Equivalent Product Proposal Process and the item offered was determined to be not equal to the specified item – 0.25 points possible.
 - iii. Substitute items proposed without following the Equivalent Products Request Process – 0 points possible.
- j. The points for each item will be summed for the total score.
- k. The determination of equivalency is based solely on the opinion of the district.

5. **BUY AMERICAN STATEMENT OF COMPLIANCE AND NOTIFICATION OF FOREIGN PRODUCTS.**

- a. *Pages do NOT count towards the total proposal page count.*
- b. For ALL specified food items or substitute/equivalent items being offered not which do not list N/A in the “Meets Buy American Y/N” cell on the Price Schedule, a Buy American statement of compliance or the Attachment P, Waiver Request to Use Foreign Products MUST be provided.
 - i. Points per item offered will be awarded on the following.
 - 1) **Buy American Statement of Compliance Provided** – 0.25 points possible
 - 2) **Waiver** Request to Use Foreign Food Products – 0.25 points possible
 - 3) No Buy American Statement, or Notification of Foreign Products Provided – 0 points possible.
 - ii. The points for each item will be summed for the total score.
- c. **Instructions for Buy American Compliance and Waiver Requests.**
 - i. ALL Buy American Statements of Compliance and Waiver Requests must be submitted in either PDF or Microsoft Word file formats.
 - ii. **Buy American Statements**
 - 1) For each food item NOT noted as N/A in the Meets Buy American section of the Price schedule and the Proposer has marked Y, the Proposer must submit a Buy American Statement of Compliance.
 - 2) A blanket letter from a manufacturer stating their products meet the Buy American provision, or a letter from the product manufacturer detailing which products do meet or do not meet the Buy American provision is acceptable.
 - I) The blanket letter must be submitted **FOR EACH ITEM** the letter applies to and must follow the naming convention noted below.
 - II) Combined files with more than one RFP item NOT be accepted and 0 points will be awarded for those items in the file.
 - III) The following naming convention MUST be used for all files.
 - a) Proposer name – RFP Item # (from the Price Schedule) – BA (Buy American Statement) - (Example: John’s Foods-BA-A1)

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iii. **Waiver Request to Use Foreign Products (See Attachment Waiver Request to Use Foreign Products)**

- 1) For each food item NOT noted as N/A in the Meets Buy American section of the Price schedule and the Proposer has marked N, the Proposer must submit a Waiver Request to Use Foreign Food Products.
 - l) A waiver request may contain more than one items and must be named with all RFP Item numbers listed on the waiver request
- 2) The following naming convention MUST be used.
 - l) Proposer name – RFP Item # (from the Price Schedule) –WR (Waiver Request) *(Example: John’s Foods-A1 A2 A3-WR)*

6. **PRICE PER CASE FOR RECEIPT, STORAGE, INVENTORYING, DELIVERY OF USDA FOODS.**

- a. *Pages do NOT count towards the total proposal page count.*
- b. Proposer must use Attachment – Price Schedule USDA Foods (see Section V – Attachments) to indicate a fixed fee per case for receipt, storage, inventorying, and delivery of the District’s USDA Foods items.

A list of current items and estimated yearly volumes are detailed in the Exhibit – Beaverton SD Estimated USDA Foods Products for 2024-25.

The lowest price will be awarded full points. All other Proposed pricing scores will be weighted against the lowest priced product. Prices double the lowest price will be awarded zero (0) points.

The Proposers score for this Evaluation Factor will be the sum of points for each product.

7. **CUSTOMER SERVICE.**

- a. *Provide no more than a two (2) page statement on the Proposer’s customer service personnel (include position titles), practices, and procedures that will be employed to meet the requirements detailed in the following sections of Section II – Statement of Work, Part I Provision of Commercial Products:*

i. ORDERING –	10 points possible
ii. SHORTAGES AND SUBSTITUTION(S) –	15 Points possible
iii. LATE DELIVERIES OR NON-DELIVERY –	15 Points possible
iv. PROOF OF DELIVERY AND INVOICING –	5 Points possible
v. CREDITS/DEBITS –	5 Points possible

8. **ABILITY TO MEET DELIVERY REQUIREMENTS.**

- a. *Provide no more than a two (2) page statement detailing how the Proposer will meet the delivery requirements detailed in Section II – Statement of Work, Part I Provision of Commercial Products, DELIVERY REQUIREMENTS.*
 - i. Specifically address the following.
 - 1) How the Proposer plans to meet the delivery day and delivery time requirements, including the volume of equipment, and drivers available to the Proposer for the accomplishment of the delivery requirements, as well as how they will be allocated to meet the District’s delivery requirements. – 20 points possible
 - 2) Discuss how recovery, and redelivery of missing, incorrect, or damaged products would be handled. – 10 points possible
 - 3) Discuss how late deliveries would be handled. – 10 points possible
 - 4) Discuss strategies being employed to hire and retain drivers. – 5 points possible
 - 5) Discuss any other factors believed to be pertinent in meeting the delivery requirements. – 5 points possible

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9. **HEALTH INSPECTION REPORT.**

- a. *Pages do NOT count towards the total proposal page count.*
- b. Provide the most recent health inspection report, which must not be older than twelve (12) months, and from at least one (1) of the following.
 - i. Local government agency
 - ii. USDA
 - iii. A USDA recognized food safety certifying agency such as NSF.
- c. Full points will be awarded for reports that show no major findings or required corrective actions.
 - i. The determination of what qualifies as a major finding or corrective action is solely up to the District.

10. **HACCP, FOOD SAFETY AND SECURITY PRINCIPLES.**

- a. *Provide no more than a one (1) page statement summarizing how Proposer incorporates HACCP, and Food Safety and Security principles into its business, including into its “Standard Operating Procedures”.*

11. **PRODUCT RECALL POLICY AND PROCEDURES.**

- a. *Provide no more than a one (1) page statement summarizing the Proposer's recall policy and procedure.*
- b. Complete the Attachment - Recall Contact Information for primary and backup recall contacts. Failure to provide Recall Contact Information may result in rejection of the Proposal.

12. **REFERENCES.**

- a. *Pages do NOT count towards the total proposal page count.*
- b. Provide three (3) professional references from projects similar to the scope of this Solicitation and accounts of similar size and complexity. K-12 school District references shall be preferred. Use of the provided Proposer Reference Form (see SECTION V – ATTACHMENTS) is required.
 - i. Beaverton School District must not be included as a reference.
 - ii. If such K-12 references are unavailable, other references may be submitted. They must be able to address Proposer's capacity, experience, customer service, and quality (including at minimum. quality of products, timeliness of deliveries, flexibility, and ease of working and communicating with Proposer's staff).
 - iii. The District reserves the right to find any Proposer not responsible who receives an unfavorable report from a Proposer-identified reference.
 - iv. The District reserves the right to investigate and consider references other than those submitted by the Proposer, including the Proposer's customers other than those listed in the Proposer's submission, and Beaverton School District experience with the Proposer can be considered.
 - 1) The District reserves the right to find any Proposer not responsible who receives an unfavorable report from a District-identified reference.
 - v. The references provided may be contacted to establish a satisfactory performance record of, but not limited to, the level of Proposer customer service and ability to timely respond to the needs of its clients.

13. **HISTORY AND CAPABILITIES.**

- a. **History.** *Provide no more than a one (1) page narrative of the Proposer's history and capabilities. – 5 points possible*
- b. **Experience.** *Provide no more than one (1) page description of the Proposer's experience in providing broadline grocery products, and receipt, storage, inventorying, and delivery of USDA Foods for a large, multi-location client. – 15 points possible*
 - i. State the number of years Proposer has provided broadline grocery products and receipt, storage, inventorying, and delivery of USDA Foods.

SECTION IV – RESPONSE AND EVALUATION

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- c. **Similar Project.** *Provide no more than, a one (1) page summary of your firm's responsibilities and scope of work for at least one (1) project similar to the scope of this Solicitation, and of similar size and complexity. – 15 points possible*
- ii. *Similar project must be included as one (1) of the three (3) Proposer identified references.*
 - a. Proposer must provide at minimum the following information for the similar project.
 - 1) Size of K-12 school district, or similar
 - 2) Location of reference
 - 3) Services provided
 - 4) Project dates
 - 5) Quantity of delivery locations
 - 6) Quantity of deliveries per week
 - 7) Average number of cases delivered per week
 - 8) Average fill rate per delivery
 - 9) Delivery time window, and rate of on-time deliveries

14. **SUSTAINABILITY.**

- a. *Provide no more than, a one (1) page narrative explaining the sustainability practices the proposer has implemented in its operation. Proposer must address, at minimum, the following.*
- i. Transportation – 4 points possible
 - ii. Water usage and quality – 3 points possible
 - iii. Energy conservation – 3 points possible
 - iv. Greenhouse gas reduction – 3 points possible
 - v. Buildings (design and construction) – 3 points possible
 - vi. Waste disposal and recycling – 3 points possible
 - vii. Procurement (how the proposer's procurement policies are used to promote sustainability) – 3 points possible
 - viii. Sustainability certifications (Example LEED Certificate) – 3 points possible

15. **COMPLETENESS AND ORGANIZATION OF THE PROPOSAL.**

- a. *There will be no pages submitted for this section.*
- b. How close does the organization of the proposal follow the PROPOSAL CONTENT REQUIREMENTS? – 5 points possible
- c. How close does the proposal contain all elements asked for in the PROPOSAL CONTENT REQUIREMENTS? – 5 points possible
- d. How close does the proposal meet or exceed page restrictions outlined in the PROPOSAL CONTENT REQUIREMENTS? – 10 points possible

SECTION B: EVALUATION CRITERIA

1. **EVALUATION CRITERIA:**

The District will score each Proposal by reviewing and evaluating the Proposal content requirements outlined above. The following table indicates how the total points in the scoring will be assigned by required Proposal item. Failure to meet minimum requirements for any individual item may disqualify the Proposal regardless of the total points scored for the other items. Each item will be evaluated as follows:

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EVALUATION CRITERIA MATRIX		Maximum Points Possible
1.	Insurance Requirement	Pass / Fail
2.	Signed Buy American Statement of Understanding	Pass / Fail
3.	Price Schedule	400
4.	Specified And Substitute/Equivalent Items	140
5.	Buy American Statements of Compliance and Notification of Foreign Products	31.5
6.	Price Per Case for Receipt, Storage, Inventorying, and Delivery of USDA Foods	200
7.	Customer Service	50
8.	Ability to Meet Delivery Requirements	50
9.	Health Inspection Report	25
10.	HACCP, Food Safety and Security Principles	25
11.	Product Recall Policy and Procedures	25
12.	References	30
13.	History and Capabilities	35
14.	Sustainability	25
15.	Completeness and Organization of the Proposal	20
PROPOSAL CONTENT SUB-TOTAL		1056.5
SITE VISIT AND INTERVIEW – (If Required)		
16.	Site Visit	100
17.	Interview	200
SITE VISIT AND INTERVIEW SUB-TOTAL		300
COMBINED TOTAL		1356.5

2. SITE VISITS. (if conducted)

- a. The evaluation committee may elect to conduct site visits for the top ranked Proposer or Proposers if the evaluation committee considers it necessary or desirable. If the evaluation committee conducts site visits points will be awarded based on the Site Visit Evaluation Form SEE SECTION V ATTACHMENTS – Site Visit Evaluation Form.

3. INTERVIEWS. (if conducted)

- a. The evaluation committee may elect to interview Proposers if the evaluation committee considers it necessary or desirable. The top ranked Proposer, or Proposers if the scoring is close, may be invited to interview. If the evaluation committee conducts interviews, the interview process will be used to supplement and clarify the information contained in the proposal.
- b. Based upon proposal scoring, as modified by the interview, and the results of reference checks, the Proposers will be given final ranking by the evaluation committee. The final ranking will be provided to the District for a final decision to award a contract.

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- c. Particular details about the interviews will be issued to those firms invited to interview.
- d. The District may request Proposer to provide a live demonstration of Proposer's work order system.
- e. Such interviews and any presentation materials will be at the Proposer's expense.]

4. **PROPOSAL EVALUATION:**

- a. **RESPONSIVENESS AND RESPONSIBILITY:** The District will utilize the following objective factors to determine if Proposals are Responsive and Proposers are Responsible:
 - i. **RESPONSIBILITY OF PROPOSER (OAR 137-047-0500).** Before awarding a Contract, the District shall determine that the Proposer submitting the most Advantageous Proposal is Responsible. The District shall use the standards set forth in ORS 279B.110 and OAR 137-047-0640(1)(c)(F) to determine if a Proposer is Responsible. In the event the District determines a Proposer is not Responsible, it shall prepare a written determination of non-Responsibility as required by ORS 279B.110 and shall reject the Proposal.
- b. **CONTINGENT PROPOSALS.** The Proposer must not make its Proposal contingent upon the District's acceptance of any terms or conditions (including Specifications) other than those contained in this Solicitation.
- c. **NON-RESIDENT PROPOSERS.** In determining the most Advantageous Responsible Proposal, the District shall apply the reciprocal preference set forth in ORS 279A.120(2)(b) and OAR 137-046-0310.
- d. **IDENTICAL PROPOSALS.** When one or more Proposals are identical under OAR 137-046-0300, the District shall award a Contract in accordance with the procedures set forth in OAR 137-046-0300.
- e. **RECYCLED MATERIALS.** The District may give preference for Recycled Materials as set forth in ORS 279A.125 and OAR 137-046-0320.
- f. **CLARIFICATION OF PROPOSALS.** After Opening, the District may conduct Discussions with apparent Responsive Proposer(s) for the purpose of clarification and to assure full understanding of the Proposal.
- g. **NEGOTIATION.** The District may only conduct Discussions or Negotiate with Proposers. After Award of the Contract, the District may only modify an awarded Contract in accordance with OAR 137-047-0800.
- h. **OBJECTIVE CRITERIA.** The District may allow, at its discretion, certain other objective evaluation criteria. Examples of such criteria include but are not limited to conversion costs, transportation cost, volume weighing, trade-in allowances, cash discounts, depreciation allowances, cartage penalties, ownership or lifecycle cost formulas.

- 5. **EVALUATION COMMITTEE:** The Proposals will be evaluated by the Evaluation Committee consisting of not less than three (3) knowledgeable individuals (Evaluators) to review and score Proposals according to the evaluation criteria set forth in this Solicitation. The District may assign certain Evaluators to evaluate specific Proposal categories in keeping with the Evaluators' area of expertise. Working as a Committee or independently (at the discretion of the District) with copies of the written Proposals, the Evaluators will independently assign scores to each Proposal received in accordance with the evaluation criteria defined herein. Evaluators will utilize the criterion (as objectively as possible) to measure the merit of each Proposal received in accordance with the subjective evaluation criteria to determine which Proposals(s) will provide the District with the most advantageous and best overall value. The recommendations of this committee may be made by obtaining at least a majority vote of the committee members and will be final; provided however, that the Purchasing Manager, upon reviewing the evaluation process and associated documentation, may request that the committee reconsider its recommendations or scores, or reconvene to complete any necessary processes.

SECTION V – ATTACHMENTS
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PROPOSAL SUBMISSION CHECKLIST

**ALL CERTIFICATIONS, FORMS, AFFIDAVITS AND DETAILED PROPOSAL CONTENT REQUIREMENTS
AS SPECIFIED IN SECTION IV MUST BE INCLUDED IN PROPOSALS.**

_____ REQUIRED AFFIDAVIT, CERTIFICATIONS AND FORMS

The following certifications and forms must be completed and signed by the person authorized to represent the Proposer regarding all matters related to the Proposal and authorized to bind the Proposer to the agreement. Failure to submit any of the required, completed and signed certifications/forms shall result in disqualification of the proposing firm.

- _____ PROPOSER CERTIFICATION. (Attachment A) This serves as the cover sheet for your Proposal.
- _____ INDEPENDENT CONTRACTOR CERTIFICATION. (Attachment B)
- _____ AFFADAVIT OF NON-COLLUSION / COMPLIANCE WITH TAX LAWS. (Attachment C)
- _____ NON-CONFLICT OF INTEREST CERTIFICATION. (Attachment D)
- _____ PROPOSER RESPONSIBILITY FORM – All Pages. (Attachment E)
- _____ PROPOSER REFERENCE FORMS – (Attachment F)
- _____ PRICE SCHEDULE – Separate Excel Document (Attachment G)
- _____ PRICE SCHEDULE USDA FOODS – (Attachment H)
- _____ BUY AMERICAN STATEMENT OF UNDERSTANDING AND RESPONSIBILITY – (Attachment I)
- _____ RECALL CONTACT INFORMATION – (Attachment J)
- _____ CERTIFICATION REGARDING FEDERAL MATTERS – (Attachment K)
- _____ SUSPENSION AND DEBARMENT CERTIFICATION – (Attachment L)
- _____ LOBBYING CERTIFICATION – (Attachment M)
- _____ CLEAN AIR AND WATER CERTIFICATE – (Attachment N)
- _____ CONTRACTOR INFORMATION FORM – (Attachment O)

DETAILED PROPOSAL CONTENT REQUIREMENTS (Continued)

Detailed Proposal Content Requirements are specified in SECTION IV – RESPONSE AND EVALUATION.

The following attachment(s) must be returned with the Proposal where required by the Solicitation.

- _____ WAIVER REQUEST TO USE FOREIGN FOOD PRODUCTS – (Attachment P)
 - _____ SUBSTITUTE/EQUIVALENT PRODUCT REQUEST – (Attachment Q)
 - _____ OREGON CERTIFICATION OF BUSINESS INCLUSION AND DIVERSITY PLAN – (Attachment R)
 - ===== EQUIVALENT PRODUCT REQUEST SAMPLE LABEL (ATTACHMENT S)
-

The following attachment(s) are NOT to be returned with the Proposal. The content of these attachment(s) must be reviewed by the Proposer. The terms and conditions are incorporated in this Solicitation and will apply to the Contract to be executed for the work.

- EXHIBIT 1 BUY AMERICAN PROVISION
- EXHIBIT 2 USDA MEMO SP 38-2017
- EXHIBIT 3 SUBSTITUTE/EQUIVALENT PRODUCT APPROVAL PROCESS AND DEADLINES
- EXHIBIT 4 PLASTIC FORK DATASHEET
- EXHIBIT 5 DELIVERY LOCATION INFORMATION
- EXHIBIT 6 ESTIMATED USDA FOODS PRODUCTS FOR 2024-25
- EXHIBIT 7 SITE VISIT EVALUATION FORM
- EXHIBIT 8 SAMPLE MASTER PRICE SERVICES CONTRACT

The following attachment(s) are **NOT** to be returned with the Proposal. The content of these attachment(s) must be reviewed by the Proposer. The terms and conditions are incorporated in this Solicitation and will apply to the Contract to be executed for the work.

- EXHIBIT 8 [Sample Contract]
-

SECTION V – ATTACHMENTS
ATTACHMENT A
RFP 23-0007

PROPOSER CERTIFICATION

Legal Name of Proposer (Firm): _____

Physical Address: _____

Mailing Address: _____

The Proposer certifies and agrees:

1. The prices in this Proposal have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other Proposer relating to: the intention to submit a Proposal, or the methods or factors used to calculate the prices Proposed.
2. The Proposer has read and understands all terms and conditions of this Solicitation. If the proposal is accepted, the Proposer agrees to the terms and conditions found in the sample Price Agreement.
3. The Proposer agrees to provide insurance as required in the sample Contract Terms and Conditions (see Attachments).
4. The Proposer has, or has available, the equipment, personnel, materials, equipment, facilities, and equipment as well as the technical and financial ability necessary to complete and execute all Work in a sound and suitable manner for the use specified and intended.
5. The Proposer agrees to execute the formal Contract within ten (10) days from date of Notice of Intent to Award.
6. The Proposer acknowledges that the person that signs this Certification is fully authorized to sign on behalf of the Proposer listed and to fully bind the Proposer to all conditions and provisions thereof.
7. The Proposer certifies that Proposer has complied or will comply with all requirements of local, state, and national laws, and that no legal requirement has been or will be violated in making or accepting this Proposal.
8. The Proposer, pursuant to ORS 279A.120 (1), (check one) is ____ / is not ____ a resident Proposer.
If not, indicate State of residency _____.
9. The Proposer certifies that it has not discriminated and will not discriminate, in violation of ORS 279A.110, against any disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business that is certified under ORS 200.055 in obtaining any required subcontract.
10. The Proposer agrees to comply with Oregon tax laws in accordance with ORS 305.385.
11. The Proposer acknowledges receipt of the following addenda: (list by number and date appearing on addenda.)

Addendum Number	Date	Addendum Number	Date
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

12. The Proposer (check one) ____ will / ____ will not extend the terms, conditions and prices to any Participating Agency that intends on establishing a Contract awarded to the Proposer resulting from this Solicitation.

Respectfully submitted this _____ day of _____, 20_____.

Signature: _____

Printed Name: _____

Phone: _____

Title: _____

Fax: _____

Email Address: _____

SECTION V – ATTACHMENTS
ATTACHMENT B
RFP 23-0007

INDEPENDENT CONTRACTOR CERTIFICATION

Proposer: _____

Employer Identification Number: _____

If Proposer signs Part A, the remainder of this Certification Statement does not need to be completed.

Part A. Proposer is a Corporation:

The Proposer/Firm is a corporation authorized to do business in the State of Oregon.

Proposer Signature: _____ Date: _____

Part B. Proposer is an Independent Contractor:

I, under penalties of perjury, certify that I am an independent contractor as defined in ORS 670.600 and that the following statements are true and correct:

1. I have filed Federal and State income tax returns in the name of my business or a business Schedule C as part of the personal income tax return, for the previous year, or expect to file federal and state income tax returns, for labor or services performed as an independent contractor in the previous year.
2. I will furnish the tools or equipment necessary for the contracted labor or services.
3. I have the authority to hire and fire employees who perform the labor or services.
4. I represent to the public that the labor or services are to be provided by my independently established business as four (4) or more of the following circumstances exist.

(Please check all that apply):

- _____ A. The labor or services are primarily carried out at a location that is separate from my residence or is primarily carried out in a specific portion of my residence, which is set aside as the location of the business.
- _____ B. Commercial advertising or business cards are purchased for the business, or I have a trade association membership with _____.
- _____ C. Telephone listing is used for the business that is separate from the personal residence listing.
- _____ D. Labor or services are performed only pursuant to written contracts.
- _____ E. Labor or services are performed for two or more different persons or agencies within a period of one year.
- _____ F. I assume financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omissions insurance or liability insurance relating to the labor or services to be provided.

Proposer Signature: _____ Date: _____

SECTION V – ATTACHMENTS
ATTACHMENT C
RFP 23-0007

**AFFIDAVIT OF NON-COLLUSION / COMPLIANCE WITH TAX
LAWS**

(Proposer)

I state that:

- (1) The correct taxpayer identification numbers are:
A. Federal Employer ID Number (EIN): _____ B. Employer's Oregon ID Number: _____
- (2) Proposer is not subject to backup withholding because (i) Proposer is exempt from backup withholding, (ii) Proposer has not been notified by the IRS that Proposer is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Proposer that Proposer is no longer subject to backup withholding;
- (3) The price(s) and amount of this Proposal must be arrived at independently and without consultation, communication or agreement with any other Supplier, Proposer or potential Proposer, except as disclosed on the attached appendix.
- (4) That neither the price(s) nor the amount of this Proposal, and neither the approximate price(s) nor approximate amount of this Proposal, will be disclosed to any other firm or person who is a Proposer or potential Proposer, and they will not be disclosed before Contract award.
- (5) No attempt has been made or will be made to induce any firm or person to refrain from proposing on this Solicitation, or to submit any noncompetitive Proposal or other complementary Proposal.
- (6) The Proposal of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive Proposal.
- (7) _____ (name of firm), its affiliates, subsidiaries, officers, directors and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted of or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to proposing on any public contract, except as described in the attached appendix.

I state that _____ (name of firm) understands and acknowledges that the above representations are material and important, and will be relied on by the Beaverton School District in awarding the contract(s) for which this Proposal is submitted. I understand and my firm understands that any misstatement in this affidavit is and will be treated as fraudulent concealment from the Beaverton School District of the true facts relating to the submission of Proposals for this contract. I am authorized to act on behalf of Proposer, and have authority and knowledge regarding Proposer's payment of taxes, and to the best of my knowledge, Proposer is not in violation of any Oregon tax laws, including, without limitation, those tax laws listed in ORS 305.380(4), the elderly rental assistance program under ORS 310.630 to 310.706; and any local taxes administered by the Oregon Department of Revenue under ORS 305.620.

(Affiant's Signature)

STATE OF OREGON

County of _____

Signed and sworn to before me on _____ by _____
(date) (Affiant's name)

Notary: _____

My Commission Expires: _____

SECTION V – ATTACHMENTS
ATTACHMENT D
RFP 23-0007

NON-CONFLICT OF INTEREST CERTIFICATION

Issuing Agency: Beaverton School District

I, _____ hereby certify I have read the statement defining conflict of interest as quoted below; that I understand the statement; that no conflict of interest exists as therein defined, which precludes an impartial Bid/Proposal to be submitted by myself or the entity/company for which the Bid/Proposal is submitted, and that if such a conflict should arise, I will immediately notify the Beaverton School District and disqualify my Bid/Proposal.

"NO OFFICER, EMPLOYEE, OR AGENT OF THE BIDDER/PROPOSER HAS ANY PERSONAL FINANCIAL INTEREST, DIRECT OR INDIRECT, IN THE OPERATION OF THE BEAVERTON SCHOOL DISTRICT OR WITH ANY PARTY CONNECTED WITH THE OREGON SCHOOL AND DISTRICT IMPROVEMENT NETWORK, DIRECTLY OR INDIRECTLY."

Proposer Name (signature)

Proposer Name (printed)

Proposer Title (printed)

Entity/Company Name (printed)

Date

**PROPOSER RESPONSIBILITY FORM
(PROPOSER’S QUALIFICATIONS AND FINANCIAL INFORMATION)**

DECLARATION AND SIGNATURES

The undersigned hereby declares that the he or she is duly authorized to complete and submit this Proposer Responsibility Form and that the statements contained herein are true and correct as of the date set forth below. Incomplete, incorrect or misleading information will be reason for a determination by the District of Proposer non-responsibility.

Date: _____

By: _____
(Signature of authorized official)

Name: _____
(Please type or print)

Title: _____
(Please type or print)

For: _____
(Firm’s name) (Please type or print)

Instructions

1. The information provided in this form is part of the District inquiry concerning proposer responsibility. Please print clearly or type.
2. If you need more space, use plain paper. Submit completed form with Proposal response.
3. Answer all questions. Submission of a form with unanswered questions, incomplete or illegible answers may result in a finding that the Proposer is not a responsible Proposer.

SECTION V – ATTACHMENTS

ATTACHMENT E

Solicitation No: RFP 23-0007

RELIABILITY

Has your company ever been declared in breach of any contract for unperformed or defective work? Yes. No.

If “yes”, explain.

Has any employee or agent of your company ever been convicted of a criminal offense arising out of obtaining, attempting to obtain, or performing a public or private contract or subcontract? Yes. No.

If “yes,” explain.

Has any employee or agent of your company been convicted under state or federal law of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty? Yes. No.

If “yes,” explain.

Has your company or any employee or agent of your company been convicted under state or federal antitrust laws?

Yes. No.

If “yes,” explain.

Has any Officer or Partner of your organization ever been an Officer or Partner of another Organization that failed to complete a construction contract? Yes. No.

If “yes,” explain.

SECTION V – ATTACHMENTS
ATTACHMENT E
Solicitation No: RFP 23-0007

FINANCIAL RESOURCES

Has your firm ever been at any time in the last ten years the debtor in a bankruptcy case? Yes. No.

If “yes,” explain.

Does your firm have any outstanding judgments pending against it? Yes. No.

If “yes,” explain.

In the past ten years, has your firm been a party to litigation, arbitration or mediation where the amount in dispute exceeded \$10,000? Yes. No.

If “yes,” explain. (Include court, case number and party names.) _____

In the past ten years, has your firm been a party to litigation, arbitration or mediation on a matter related to payment to subcontractors or work performance on a contract? Check “yes” even if the matter proceeded to arbitration or mediation without court litigation. Yes. No.

If “yes,” explain. (Include court, case number and party names.)

Have you or any of your affiliates discontinued business operation with outstanding debts? Yes. No.

If “yes,” explain.

SECTION V – ATTACHMENTS
ATTACHMENT E
Solicitation No: RFP 23-0007

KEY PERSONNEL

List the principal individuals of your company, their current job title, the total years of experience they have in the industry and their current primary responsibility for your company. Corporations list current officers and those who own 5% or more of the corporation’s stock. Limited liability companies list members who own 5% or more of the company. Partnerships list all partners. Joint ventures list each firm that is a member of the joint venture and the percentage of ownership the firm has in the joint venture.

ITEM	Principal Individual
A. Name	
B. Position	
C. Years in Position	
D. Current Primary Responsibility	
ITEM	Principal Individual
A. Name	
B. Position	
C. Years in Position	
D. Current Primary Responsibility	
ITEM	Principal Individual
A. Name	
B. Position	
C. Years in Position	
D. Current Primary Responsibility	
ITEM	Principal Individual
A. Name	
B. Position	
C. Years in Position	
D. Current Primary Responsibility	

Person who will be in direct charge of work if your company is awarded this Contract:

ITEM	PERSON IN DIRECT CHARGE
A. Name	
B. Position	
C. Years in Position	
D. Largest Project Supervised - \$	
E. Largest number of employees ever supervised	

SECTION V – ATTACHMENTS
ATTACHMENT F
Solicitation No:

PROPOSER REFERENCE FORM

PROPOSER REFERENCE FORM FOR _____
(Insert Name of Proposer)

Proposer must provide [five (5)] references and must use a separate copy of this form for each reference.

Date(s) Work Performed: _____

Name(s) of Project(s): _____

Value of Project(s): \$ _____

Name of Company: _____

Address: _____

Contact Name: _____

Telephone: _____

Email: _____

Method: Subjective Evaluation

Each reference may be checked for, but not limited to, adherence to contract terms and conditions, timelines, quality standards, overall customer service, project being of similar size, scope and complexity.

PRICE SCHEDULE

ATTACHMENT G is attached as a separate “EXCEL” document.

Attachment H

RFP 23-0007

Price Schedule for Receipt, Storage, Inventorying, and Delivery of the District's USDA Foods Items

Instructions: Provide a price per case for the receipt, storage, inventorying and delivery of the District's USDA (formerly known as commodity foods) foods items). Price should be inclusive of all fees. IMPORTANT, please note per USDA guidelines Lumper fees are NOT allowed.

No.	Value Pass Through Method	Price per Case	Notes
1	Fee for Service Items		

Proposer

Name

Title

Signature (a typed signature constitutes an e-signature)

Date

ATTACHMENT I
RFP 23-0007

Buy American Statement of Understanding and Responsibility

The undersigned Proposer to Beaverton School District Solicitation # _____ understands the requirements of 7 CFR §210.21(d) Procurements (210.21(d), the Buy American Provision) and the guidance offered in USDA Memo SP 38-2017 Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program.

Furthermore, it is the intention of the Proposer to offer food products that comply with the Buy American Provision and the guidance in USDA Memo SP 38-2017 where ever possible and where it is not possible, to notify the District.

The Proposer also understands it is solely the decision of the District to use or not use a product not meeting the Buy American Provision or the guidance in USDA Memo SP 38-2017.

Name	Title
Signature	Date
Entity/Company Name	

Recall Contact Information

Proposer Name: _____ Date: _____

Primary Contact:

Name: _____

Title: _____

Email: _____

Office Phone: _____

Cell Phone: _____

Back Up Contact:

Name: _____

Title: _____

Email: _____

Office Phone: _____

Cell Phone: _____

Recall Contact Information Completed by:

Name: _____

Title: _____ Telephone Number: _____ Fax Number: _____

E-Mail: _____

Signature: _____

ATTACHMENT K
RFP 23-0007

Certification Regarding Federal Matters

School districts seeking to procure goods and services using funds under a federal grant or contract, specific federal laws, regulations, and requirements may apply in addition to those under state law. This includes, but is not limited to, the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 CFR 200 (sometimes referred to as the "Uniform Guidance"). All Contractors submitting proposals must complete this certification form regarding Contractor's willingness and ability to comply with certain requirements which may be applicable to specific District purchases using federal grant funds.

Certification

Proposer certifies that Proposer shall comply, and require all sub-vendors to comply, with all federal laws, regulations, and executive orders applicable to a Contract. These may include but not be limited to:

- 1) **Equal Employment Opportunity.** If the Contract is for more than \$10,000, compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). A religious organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, in section 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-1, is not forfeited.
- 2) **Copeland Anti-Kickback Act.** Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3).
- 3) **Davis-Bacon Act.** Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5).
- 4) **Contract Work Hours and Safety Standards Act.** Compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5).
- 5) **Clean Air Act and Clean Water Act.** If the Contract is for more than \$100,000, compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection DAS regulations (40 CFR part 15).
- 6) **Energy Policy and Conservation Act.** Compliance with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
- 7) **Disclosure of Lobbying Activities.** Pursuant to Byrd Anti-Lobbying Amendment 31 USC 1352, the contractor must disclose lobbying activities in connection with school nutrition programs. If there are material changes after the initial filing, updated reports must be submitted on a quarterly basis. 2 CFR 200.326, 2 CFR 200.450 and 2 CFR 200 Appendix II (Only applies to contracts over \$100,000)
- 8) **Certification Regarding Lobbying.** Pursuant to 31 USC 1352, the contractor must submit a certification regarding lobbying which conforms in substance with the language provided in 2 CFR 200.450. No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay 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 any of the following covered Federal actions. (Only applies to contracts over \$100,000).
- 9) **Certification of Independent Price Determination.** The vendor admits that all prices in their Offer have been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition, as

to any matter relating to such prices with any other Offeror or with any competitor certification regarding non-collusion.

- 10) **Resource Conservation and Recovery Act.** Compliance with mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 USC 6901 et. seq.). Section 6002 of that Act (codified at 42 USC 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Part 247. 7 CFR § 250.31 Procurement requirements (Food Distribution).
- 11) **Audits of States, Local Governments and Non-profit Organizations.** Compliance with applicable audit requirements and responsibilities set forth in the Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations." Sub recipients shall also comply with applicable Code of Federal Regulations (CFR) sections and OMB Circulars governing expenditure of federal funds.
- 12) **Pro-Children Act of 1994** Compliance with the Pro-Children Act of 1994 (codified at 20 USC section 6081 et. seq.).
- 13) **Debarment and Suspension.** Vendor certifies and shall not permit any person or entity to be a sub-vendor if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Non-procurement Programs" in accordance with Executive Orders No. 12549 and No. 12689, "Debarment and Suspension". (See 2 CFR Part 180.) This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and Vendors declared ineligible under statutory authority other than Executive Order No. 12549. Sub-vendors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.
- 14) **National School Lunch Program.** Vendor must comply with the requirements of the National School Lunch Program, 7 CFR §210; title IX of the Education Amendments of 1972; section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Department of Agriculture regulations on nondiscrimination (7 CFR Parts 15, 15a, and 15b); and FNS Instruction 113-1., 7 CFR 250.31.

I, the official named below, certify that I am duly authorized to legally bind Proposer to this Certification Regarding Federal Matters:	
<i>Proposer Name (Printed)</i>	
<i>By (Authorized Signature of Person with Authority to Obligate the Proposer), and Date</i>	
<i>Printed Name</i>	<i>Title of Person Signing</i>

Suspension and Debarment Certification

NOTE: This certificate must be completed for all new and renewal contract years when the contract exceeds \$100,000.

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

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, Title 7 CFR Part 3017, Section 3017.510, Participants' responsibilities. The regulations were published as Part IV of the January 30, 1989, Federal Register (pages 4722-4733). Copies of the regulations may be obtained by contacting the Department of Agriculture agency with which this transaction originated.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS BELOW)

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) 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.

Organization Name PR/Award Number or Project Name

Names(s) and Title(s) of Authorized Representative(s)

Signature(s) Date

Suspension and Debarment 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 Nonprocurement List.
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 are 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, including suspension and/or debarment.

ATTACHMENT M
RFP 23-0007

Certification Regarding Lobbying Disclosure of Lobbying Activities
(Complete the form that is applicable.)

NOTE: This certificate must be completed for all new and renewal contract years when the contract exceeds \$100,000.

Applicable to Grants, Subgrants, Cooperative Agreements, and Contracts Exceeding \$100,000 in Federal Funds.

Submission of this certification is a prerequisite for making or entering into this transaction and is imposed by section 1352, Title 31, U.S. Code. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. 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.

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

- (1) 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 a 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.
- (2) 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 grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all covered subawards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

Name/Address of Organization

Name/Title of Submitting Official

Signature

Date

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

1. Type of Federal Action: _____

- a. contract
- b. grant
- c. cooperative agreement
- d. loan
- e. loan guarantee
- f. loan insurance

2. Status of Federal Action: _____

- a. bid/offer/application
- b. initial award
- c. post-award

3. Report Type: _____

- a. initial filing
- b. material change

For Material Change Only:

Year _____
Quarter _____
Date of Last Report _____

4. Name and Address of Reporting Entity:

_____ Prime _____ Subawardee Tier _____, if known:

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, if known:

Congressional District, if known:

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, if applicable: _____

8. Federal Action Number, if known:

9. Award Amount, if known:

\$ _____

10a. Name and Address of Lobbying Entity:

(if individual, last name, first name, middle)

10b. Individuals Performing Services (include address if different from 10a.) (last name, first name, middle)

11. Amount of Payment (check all that apply):

\$ _____

___ Actual ___ Planned

12. Type of payment (check all that apply):

- ___ a. retainer
- ___ b. one-time fee
- ___ c. commission
- ___ d. contingent fee
- ___ e. deferred
- ___ f. other; specify: _____

13. Form of Payment (check all that apply):

- ___ a. cash
- ___ b. in-kind; specify:

Nature _____
Actual _____

14. Continuation Sheet(s) SF-LLL-A Attached:

Yes ___ (Number _____)
No ___

15. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or member(s) contracted for Payment indicated in Item 11:

Attach Continuation Sheet(s) SF-LLL-A (if necessary)

16. Information requested through this form is authorized by Title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature: _____ Print

Name: _____ Title:

Telephone: _____ Date:

Federal Use Only:

Authorized for Local Reproduction Standard
Form - LLL

This disclosure form shall be completed by the reporting entity, whether sub awardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity 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 a covered Federal action. If the space on the form is inadequate, use of SF-LLL-A Continuation Sheet for additional information. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
 2. Identify the status of the covered Federal action.
 3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
 4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
 5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
 6. Enter the name of the Federal agency making the award or loan commitment. Include at Sponsorst one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
 7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
 8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) Number, Invitation for Bid (IFB) Number; grant announcement number; the contract, grant or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
 9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
- 10(a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.
- 10(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
 12. Check type of payment. Check all that apply.
 13. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment. Check all that apply. If other, specify nature.
 14. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached. If yes, list number of sheets attached.
 15. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

The certifying official shall sign and date the form, print his/her name, title, and telephone number. Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget. Paperwork Reduction Project (0348-00046), Washington, DC 20503.

Clean Air and Water Certificate

NOTE: This certificate must be completed for all new and renewal contract years when the contract exceeds \$150,000.

Applicable if the contract exceeds \$150,000, or the Vending Officer has determined that the orders under an indefinite quantity contract in any one year will exceed \$150,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 7401-7671q.) or the Federal Water Pollution Control Act (33 U.S.C. 1251-1387) and is listed by EPA, or the contract is not otherwise exempt. The Vendor shall execute this Certificate.

NAME OF VENDOR

THE VENDOR AGREES AS FOLLOWS:

- A. To comply with all the applicable standards, orders or regulation issued pursuant to the Clean Air Act, as amended , 42 U.S.C 7401-7671q and the Federal Water Pollution Control Act, as amended, 33 U.S.C.1251-1387 respectively, relating to inspection, monitoring, entry, reports and information as well as other requirements specified in Section 114 and Section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the award of this contract.
- B. That no portion of the work required by this prime contract will be performed in a facility listed on the Environmental Protection Agency 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.
- C. 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.
- D. 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:

- A. The term "Air Act" means the Clean Air Act, as amended (42 U.S.C 7401-7671q, as amended by Public Law 91-604).
- B. The term "Water Act" means Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387, as amended by Public Law 92-500).
- C. 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 Clean Air Act or Executive Order 11738, an applicable implementation plan as described in section 42 U.S.C.7410(d) of the Clean Air Act (42 U.S.C. 7410), an approved implementation procedure or plan under Section 42 U.S.C 7405-7411, or approved implementation procedure under (42 U.S.C. 7412).
- D. The term "Clean Water Standards" means any enforceable limitation, control, condition, prohibition, standard, or other requirement which is promulgated pursuant to the Federal Water Pollution Control 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 the Water Act (33 U.S.C. 1342) or by local government to ensure compliance with pretreatment regulations as required by the Water Act (33 U.S.C. 1317).

- E. The term "Compliance" means compliance with clean air or water standards. Compliance shall also mean compliance with a schedules, plans, and orders 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 Clean Air Act or Federal Water Pollution Control Act and regulations issued pursuant thereto.
- F. The term "facility" means any building, plant, installation, structure, mine, vessel, or other floating craft, location or sites of operations, owned, sponsored, or supervised by the Vendor.

SIGNATURE/TITLE OF THE VENDOR AUTHORIZED REPRESENTATIVE

DATE

ATTACHMENT O
RFP 23-0007

Contractor Information Sheet

Proposer: _____

Please provide the following contact information for the individuals who will be responsible for administering the contract if awarded to the proposer:

1. Primary Contact: _____
Title: _____ Telephone Number: _____
E-mail: _____

2. Problems and Emergencies provide 2 representatives:

Name: _____
Title: _____ Telephone Number: _____
E-Mail: _____

Name: _____
Title: _____ Telephone Number: _____
E-Mail: _____

Please provide the following information regarding ordering and shipments:

1. Order minimum (Cases or lbs.) _____
2. Average order lead time: _____

Vendor Information Sheet Compiled by:

Name: _____
Title: _____ Telephone Number: _____
Fax Number: _____ E-Mail: _____

Signature: _____

Waiver Request to Use Foreign Food Products

Contractor shall purchase for resale through the Agreement, to the maximum extent practicable, domestic Food Service Products and shall comply, as applicable, and shall cause each of its sub-vendors to comply, with the applicable requirements and responsibilities set forth in the Buy American Provision of federal regulations 7 CFR 210.21(d) and 7 CFR 220.16(d).

Domestic Food Service Products mean:

1. An agricultural commodity that is produced in the United States, and;
2. A Food Service Product that is processed in the United States substantially using agricultural commodities that are produced in the United States.
 - a. As required by the Buy American provision, all products must be of domestic origin as required by 7 CFR Part 210.21(d).
 - b. The District participates in the National School Lunch Program and School Breakfast Program and is required to use the nonprofit food service funds, to the maximum extent practical, to buy domestic commodities or products for Program meals. A "domestic commodity or product" is defined as one that is either produced in the U.S. or is processed in the U.S. substantially using agricultural commodities that are produced in the U.S. as provided in 7 CFR Part 210.21(d).
 - c. Substantially means over 51% of the final processed product (by weight or volume) must consist of agricultural commodities that were grown domestically.
 - d. Exceptions to the Buy American provision should be used as a last resort; however, an alternative or exception may be approved upon request. To be considered for the alternative or exception, the request must be submitted in writing to a designated official, a minimum of 10 days in advance of delivery.

The request must include the:

1. Reason for exception: limited/lack of availability or price (include price): Price of the domestic food product; and Price of the non-domestic product that meets the required specification of the domestic product.
2. Alternative substitute (s) that are domestic and meet the required specifications:
 - a. Price of the domestic food alternative substitute (s); and
 - b. Availability of the domestic alternative substitute (s) in relation to the quantity ordered

Contractor shall provide the district with point of origin for all products and alert the district if product cannot reasonably be provided domestically due to lack of availability or without a significant price increase.

Original Items not Meeting Buy American					Domestic Alternative Items					
Distributor's Code	Item	Reason for Request	Price per Serv/LB	(District Use Only) Approval	Distributor's Code	Alternative's Manf #	Alternative Item	Availability	Price per Serv/LB	(District Use Only) Approval
		<input type="checkbox"/> Not Available Domestically <input type="checkbox"/> Price of Foreign Item		<input type="checkbox"/> Yes <input type="checkbox"/> No						<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Not Available Domestically <input type="checkbox"/> Price of Foreign Item		<input type="checkbox"/> Yes <input type="checkbox"/> No						<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Not Available Domestically <input type="checkbox"/> Price of Foreign Item		<input type="checkbox"/> Yes <input type="checkbox"/> No						<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Not Available Domestically <input type="checkbox"/> Price of Foreign Item		<input type="checkbox"/> Yes <input type="checkbox"/> No						<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Not Available Domestically <input type="checkbox"/> Price of Foreign Item		<input type="checkbox"/> Yes <input type="checkbox"/> No						<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Not Available Domestically <input type="checkbox"/> Price of Foreign Item		<input type="checkbox"/> Yes <input type="checkbox"/> No						<input type="checkbox"/> Yes <input type="checkbox"/> No

Add additional pages if necessary.

Company Name

Name Title

Signature (a typed Signature constitutes an e-signature) Date

BSD Approval to Ship (required PRIOR to shipping)

Ship Non-Domestic Item(s) Ship Domestic Alternative Do NOT Ship

Term of Approval

Start Date End Date

Name Title

BSD NS Representative Signature Date

Equivalent Product Request

SPECIFIED ITEM INFORMATION (From Price Proposal/Product Specification Form)

 RFP ITEM NUMBER: _____
 RFP ITEM NAME: _____
 SPECIFIED BRAND: _____
 SPECIFIED ITEM CODE: _____

PROPOSED EQUIVALENT PRODUCT INFORMATION

 MFR NAME: _____
 MFR PRODUCT NAME: _____
 MFR BRAND: _____
 MFR ITEM CODE: _____

REQUIRED PRODUCT INFORMATION FOR PROPOSED EQUIVALENT:

The required documents must be current within the last three (3) years or they must be accompanied by a signed statement from the manufacturer guaranteeing that the information is still current and accurate.

- Nutrition Facts
- Ingredients List
- CN Label **or** Product Formulation Statement
- Preparation Instructions

The undersigned certifies the function, appearance, and quality of the proposed equivalent are equal or superior to specified item. The undersigned agrees, if this page is reproduced, to the terms and conditions for equivalents found in the proposal documents and that they apply to this proposed equivalent.

Request Submitted by:

 Name

 Signature Date

 Company Name

 Street Address

 City, State, Zip

 Telephone Number

 Email

 Fax Number

For Use by District Staff

- | | |
|--|--|
| <input type="checkbox"/> Sample Received | <input type="checkbox"/> Nutrition Facts |
| <input type="checkbox"/> Ingredients List | <input type="checkbox"/> CN Label/PFS |
| <input type="checkbox"/> Preparation Instructions | |
| _____ | |
| <input type="checkbox"/> Approved-Equal | |
| <input type="checkbox"/> Not Approved-No Sample | |
| <input type="checkbox"/> Not Approved-Sample Late : Date _____ | |
| <input type="checkbox"/> Not Approved-Missing Documents | |
| <input type="checkbox"/> Not Approved- Not Nutritionally Equivalent | |
| <input type="checkbox"/> Not Approved-Taste Test Determined not Equivalent | |

 By

 Date

 Remarks:

ATTACHMENT R
RFP 23-0007

Oregon Certification of Business Inclusion and Diversity Plan

“Certified Firm” means a small business certified under ORS 200.055 by the Oregon Certification Office for Business Inclusion and Diversity (COBID) as a minority-owned business, woman-owned business, service-disabled veteran-owned business, or emerging small business.

Certified Firm Participation

As noted in Governor Kitzhaber’s Executive Order 12-03, “Minority-owned and Woman-owned businesses continue to be a dynamic and fast-growing sector of the Oregon economy. Oregon is committed to creating an environment that supports the ingenuity and industriousness of Oregon’s Minority Business Enterprise [MBE] and Woman Business Enterprise [WBE]. Emerging Small Business [ESB] firms are also an important sector of the state’s economy.” In 2015, HB 3303 revised ORS 200.055 to also include a certification for “. . . business[es] that a service-disabled veteran owns”.

According to ORS 200.090, Contracting agencies must aggressively pursue a policy to provide opportunities to Certified Firms. As such, Certified Firms must have an equal opportunity to participate in the performance of contracts financed with state funds. By submitting its offer, Proposer certifies that it has taken, and if there are further opportunities, will take reasonable steps to ensure that Certified Firms are provided an equal opportunity to compete for and participate in the performance of any subcontracts resulting from this procurement. Proposer has not discriminated and will not discriminate against a sub-vendor in the awarding of a subcontract because the sub-vendor is a Certified Firm.

Proposer further certifies and agrees that it has not discriminated and will not discriminate in its employment practices with regard to ethnicity, creed, age, religious affiliation, gender, disability, sexual orientation, or national origin.

Following bid due date and prior to Contract Award, the Proposer with the apparent highest scoring Proposal must provide, within five days of Notice of Intent to Award, a Certified Firm Outreach Plan using the form on the following page. The information submitted in response to this clause will not be considered in any scored evaluation.

Oregon Certification of Business Inclusion and Diversity Plan (continued)

1. Is Proposer an Oregon Certified Firm? Yes No
If yes, indicate all certification type(s): DBE MBE WBE SDV ESB

Oregon State Certification Number: _____

2. Does Proposer foresee any subcontracting opportunities for this procurement? Yes No

If no, do not complete the rest of this form.

3. The Proposer shall provide a narrative description of its experience in obtaining a certified firm's participation as a sub-vendor, consultant, or supplier on previous projects, and discuss any innovative or particularly successful measures that the Proposer has undertaken. The Proposer shall include a list of Certified Firms with which it has had a contractual relationship during the past 24 months immediately preceding the date this solicitation document was issued. If none, mark the following checkbox: *No prior experience obtaining participation from Certified Firms.*

4. The Proposer shall provide examples where participation was achieved by Certified Firms, along with information regarding the subcontracting participation levels of Certified Firms for up to three projects/contracts that the Proposer is either currently performing or has completed within the past 24 months immediately preceding the date this solicitation document was issued. Participation by Certified Firms should be described as the percentage of the dollar value of subcontracts and material or supply contracts awarded as compared with the total dollar value of subcontracts and material or supply contracts let for each identified project or contract. The Proposer shall describe any technical assistance or mentoring the Proposer provided to Certified Firms subcontracting on each project. If none, mark the following checkbox: *No prior experience obtaining participation from Certified Firms.*

Project 1 Name _____

Award Date ___/___/___ Completion Date ___/___/___ Contract Award Amount \$ _____

Certified Firms goal percentage, if applicable _____% Certified Firms achievement percentage _____%

Certified Firms subcontract award amount \$ _____ Certified Firms spend achieved \$ _____

Describe any technical assistance or mentoring provided to Certified Firms subcontracting on this project.

Project 2 Name _____

Award Date ___/___/___ Completion Date ___/___/___ Contract Award Amount \$ _____

Certified firms goal percentage, if applicable _____% Certified firms achievement percentage _____%

Certified firms subcontract award amount \$ _____ Certified firms spend achieved \$ _____

Describe any technical assistance or mentoring provided to Certified Firms subcontracting on this project.

Oregon Certification of Business Inclusion and Diversity Plan (continued)

Project 3 Name _____

Award Date ___/___/___ Completion Date ___/___/___ Contract Award Amount \$ _____

Certified firms goal percentage, if applicable _____ % Certified firms achievement percentage _____ %

Certified firms subcontract award amount \$ _____ Certified firms spend achieved \$ _____

Describe any technical assistance or mentoring provided to firms subcontracting on this project.

5. If the total cost of the awarded contract is expected to be greater than \$100,000, the Proposer shall describe the outreach and subcontracting plan it will use, if awarded the contract, to provide Oregon Certified Firms an equal opportunity to perform any subcontracts under the contract. The plan must be realistic and based on Proposer's successful past experience. If Proposer has no previous outreach experience, the Proposer shall describe the outreach plan it intends to use if awarded the contract.

The Proposer must include the following in its plan:

- i. A description of the steps that the Proposer will take to solicit participation by Certified Firms;
- ii. A description of the mentoring, technical, or other business development assistance the Proposer will provide to sub-vendors needing or requesting such services.

If awarded the contract, the Proposer must accept, as contract performance obligations, the outreach and subcontracting plan described in this section. ***If Certified Firms are unavailable for type of work to be performed, please indicate in this section.***

Company Name: _____

Authorized Signature: _____

Name of Authorized Representative: _____

Title: _____

Equivalent Product Request Sample Label

Beaverton SD RFP#: _____

Number of Samples in Case: _____

REQUEST SUBMITTED BY:

PROPOSER COMPANY NAME: _____

PROPOSER'S REPRESENTATIVE CONTACT INFORMATION:

CONTACT NAME: _____

PHONE NUMBER: _____

EMAIL ADDRESS: _____

Exhibit 1
RFP 23-0007

7 CFR §210.21(d) Procurements (210.21(d) - Buy American Provision

(d) *Buy American*—(1) *Definition of domestic commodity or product.* In this paragraph (d), the term ‘domestic commodity or product’ means—

(i) An agricultural commodity that is produced in the United States; and

(ii) A food product that is processed in the United States substantially using agricultural commodities that are produced in the United States.

(2) *Requirement.* (i) *In general.* Subject to paragraph (d)(2)(ii) of this section, the Department shall require that a school food authority purchase, to the maximum extent practicable, domestic commodities or products.

(ii) *Limitations.* Paragraph (d)(2)(i) of this section shall apply only to—

(A) A school food authority located in the contiguous United States; and

(B) A purchase of domestic commodity or product for the school lunch program under this part.

(3) *Applicability to Hawaii.* Paragraph (d)(2)(i) of this section shall apply to a school food authority in Hawaii with respect to domestic commodities or products that are produced in Hawaii in sufficient quantities to meet the needs of meals provided under the school lunch program under this part.



Food and
Nutrition
Service

DATE: June 30, 2017

MEMO CODE: SP 38-2017

Park Office
Center

SUBJECT: Compliance with and Enforcement of the Buy American Provision
in the National School Lunch Program

3101 Park
Center Drive
Alexandria
VA 22302

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

The Food and Nutrition Service (FNS) has continued to receive a number of inquiries relating to the details and enforcement of the Buy American provision in 7 CFR 210.21(d). This memorandum replaces SP 24-2016, *Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program*, dated February 03, 2016. This guidance provides several updates, including suggested contract language to be utilized in solicitations, and serves to reinforce the importance of the Buy American provision to our economy and its positive effects on small and local businesses.

Buy American provision requirements. Section 104(d) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Public Law 105-336) added a provision, Section 12(n) to the National School Lunch Act (NSLA) (42 USC 1760(n)), requiring school food authorities (SFAs) to purchase, to the maximum extent practicable, domestic commodities or products. This Buy American provision supports the mission of the Child Nutrition Programs, which is to serve children nutritious meals and support American agriculture.

The Buy American provision applies to SFAs located in the 48 contiguous United States and is one of the procurement standards these SFAs must comply with when purchasing commercial food products served in the school meals programs. Although Alaska, Hawaii, and the U.S. territories are exempt from the Buy American provision, SFAs in Hawaii are required to purchase food products produced in Hawaii in sufficient quantities, as determined by the SFA, to meet school meal program needs per 7 CFR 210.21(d)(3). Likewise, SFAs in Puerto Rico are required to purchase food products produced in Puerto Rico in sufficient quantities, under 42 USC 1760(n)(4).

Section 12(n) of the NSLA defines “domestic commodity or product” as an agricultural commodity that is produced in the U.S. and a food product that is processed in the U.S. substantially using agricultural commodities produced in the U.S. Report language accompanying the legislation noted that “substantially means over 51% from American products.” Therefore, over 51% of the final processed product (by weight or volume) must consist of agricultural commodities that were grown domestically. Thus, for foods that are unprocessed, agricultural commodities must be domestic, and for foods that are processed, they

must be processed domestically using domestic agricultural food components that are comprised of over 51% domestically grown items, by weight or volume as determined by the SFA.

For products procured by SFAs for use in the Child Nutrition Programs using nonprofit food service account funds, the product's food component is considered the agricultural commodity. FNS defines food component as one of the food groups which comprises reimbursable meals. The food components are: meats/meat alternates, grains, vegetables, fruits, and fluid milk. Please refer to 7 CFR 210.2 for full definitions. Any product processed by a winning vendor must contain over 51% of the product's food component, by weight or volume, from U.S. origin. This definition of domestic product serves both the needs of schools and American agriculture. Products from Guam, American Samoa, Virgin Islands, Puerto Rico, and the Northern Mariana Islands are considered domestic products under this provision as these products are from the territories of the U.S.

Implementing the Buy American provision. SFAs are reminded that for all procurement transactions for food when funds are used from the nonprofit food service account, whether directly by an SFA or on its behalf, procurement transactions must comply with the Buy American provision. Implementation of the Buy American provision should be done by: including Buy American in documented procurement procedures, State agency prototypes documents, and all procurement solicitations and contracts; including domestic requirements in bid specifications; contract monitoring; and verifying cost and availability of domestic and non-domestic foods using data in the USDA Agricultural Marketing Service's (AMS) weekly market report at <https://marketnews.usda.gov/mnp/fv-report-config-step1?type=termPrice>.

The Buy American provision supports local and small businesses. Using food products from local sources supports local farmers and provides healthy choices for children in the school meal programs while supporting the local economy. Requiring compliance with the Buy American provision also supports SFAs working with local, or small, minority, and women-owned businesses as required by Federal regulations (see 2 CFR 200.321). FNS also encourages purchasing food products from local and regional sources when expanding farm to school efforts.

USDA Foods comply with Buy American requirements. FNS encourages SFAs to maximize their use of USDA Foods, which comply with Buy American requirements. USDA Foods are domestic, and purchasing from 100% domestic origin sources is a longstanding USDA policy based on Section 32 of the Agriculture Act of 1935 (P.L. 74-320 as amended; 7 U.S. Code 612c). However, processed end products that contain USDA Foods need to meet the 51% domestic requirement, by weight or volume.

Limited exceptions to the Buy American provision. There are limited exceptions to the Buy American provision which allow for the purchase of foods not meeting the “domestic” standard as described above (i.e., “non-domestic”) in circumstances when use of domestic foods is truly not practicable. These exceptions, as determined by the SFA, are:

- The product is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality; or
- Competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product.

It should be noted that FNS has not defined a dollar amount or percentage triggering an exception requiring consideration of alternatives. Before utilizing an exception, alternatives to purchasing non-domestic food products should be considered. For example, SFAs should ask:

- Are there other domestic sources for this product?
- Is there a domestic product that could be easily substituted, if the non-domestic product is less expensive (e.g. substitute domestic pears for non-domestic apples)?
- Am I soliciting bids for this product at the best time of year? If I contracted earlier or later in the season, would prices and/or availability change?
- Am I using third-party verification, such as through USDA AMS, to determine the cost and availability of domestic and nondomestic foods?

If an SFA is using one of the above exceptions, there is no requirement to request a waiver from the State agency or FNS in order to purchase a non-domestic product. SFAs must, however, keep documentation justifying their use of exception(s). FNS has provided sample language of such, to be used as a reference in solicitation and contract documents; these are found in Question 5 in the Questions and Answers document below. Monitoring of contractors by the SFA and oversight by the State agency are critical functions in enforcing the Buy American provision, including review of exceptions, as further outlined below.

Compliance with, and monitoring of, the Buy American provision by SFAs. To ensure compliance with the Buy American provision the SFA must ensure solicitation and contract language includes the requirement for domestic agricultural commodities and products. The SFA must also include the Buy American requirement in its documented procurement procedures and retain records documenting any exceptions. SFAs should ask the supplier, i.e., manufacturer or distributor, for specific information about the percentage of U.S. content in any processed end product. In order for SFAs to be able to document the domestic content, they should include in their procurement process a requirement for certifying the domestic percentage of the agricultural food component of commodities and products.

Further, solicitation and contract language must be monitored by the SFA to determine contractor compliance as required by 2 CFR 200.318(b), in order to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. Monitoring is also accomplished by reviewing products and delivery invoices

or receipts to ensure the domestic food that was solicited and awarded is the food that is received. SFAs also need to conduct a periodic review of storage facilities, freezers, refrigerators, dry storage, and warehouses to ensure the products received are the ones solicited, and awarded, and comply with the Buy American provision.

Monitoring of the Buy American provision by State agencies. State agencies conducting procurement reviews in conjunction with, or as a separate review from, the administrative review process must ensure SFA compliance with the Buy American provision. During a procurement review, State agencies should: (1) determine if SFAs are purchasing domestic commodities as defined in 7 CFR 210.21(d); (2) check that solicitations and contracts contain the Buy American certification language recommended in Questions 6 and 7 below; and (3) review a sample of supplier invoices or receipts to determine whether the solicited-for domestic foods were provided by the awarded contractor. If the SFA is non-compliant with the Buy American provision, the State agency must issue a finding and require corrective action which may include:

- Requiring contract amendments to include language to supply domestic foods, or a new solicitation if the contract amendment is determined, by the contracting parties or State agency, to be a material change;
- Attending a procurement training to increase compliance with procurement standards, including the Buy American provision; and
- Fiscal action for repeat or egregious findings, on a case-by-case basis with approval by the appropriate FNS Regional Office.

During an on-site administrative review, State agencies should look at the labels on a variety of food products in SFA storage facilities and if the State agency identifies non-domestic foods, the State agency must request documentation justifying the limited exception(s) outlined above. If such is not provided, the State agency must issue a finding and require corrective action, which may include:

- Requiring review of food deliveries for contractor compliance;
- Monitoring to ensure the correct domestic food components contracted for are delivered;
- Prior to accepting foods, ensuring that an alternative domestic food component, or an exception to purchase non-domestic foods, has been approved for delivery; and
- Fiscal action for repeat or egregious findings, on a case-by-case basis with approval by the appropriate FNS Regional Office.

Both the administrative review and procurement review teams should work together and communicate findings in order to provide comprehensive monitoring of the Buy American requirement.

Regional and State Directors
Page 5

State agencies are reminded to distribute this memorandum to SFAs immediately. SFAs should direct any questions concerning this guidance to their State agency. State agencies with questions should contact the appropriate FNS Regional Office.

Original Signed

Sarah E. Smith-Holmes
Director
Program Monitoring and Operational Support
Child Nutrition Programs

Questions and Answers for the Buy American Provision

1) How would an SFA determine that an item is a “domestic commodity or product”?

Answer: To determine if a food item meets the Buy American provision, the SFA would need to ensure that the solicited-for domestic foods were included in the vendor response, and provided by the awarded contractor in the foods delivered to the SFA. Section 12(n) of the NSLA defines “domestic commodity or product” as an agricultural commodity produced in the U.S. and a food product processed in the U.S. substantially using agricultural commodities that are produced in the U.S. Reports accompanying the legislation noted that “substantially means over 51% from American products.”

For products procured by SFAs for use in the Child Nutrition Programs, the food component of the product is the agricultural commodity. FNS defines food component as one of the food groups which comprise reimbursable meals. The food components are: meats/meat alternates, grains, vegetables, fruits, and fluid milk. Please refer to 7 CFR 210.2 and 210.10 for full definitions and use of the terms, respectively. Any product processed by a responsive vendor must contain over 51% of the food component, by weight or volume, from U.S. origin.

When considering juice for example, in order for the product to be considered “domestic” in accordance with the Buy American provision, the juice must contain over 51% of the juice or juice concentrate, by volume, from fruits or vegetables grown in the U.S. FNS does not consider water – whether tap or bottled – to be a domestically grown agricultural commodity for purposes of this provision. Likewise, packaging and labor are not agricultural commodities. For products procured by SFAs to be served in the Child Nutrition Programs, the fruit/vegetable component of the product, by volume, is the agricultural commodity. For fruit/vegetable juices, in order to be considered responsive, the juice provided by a vendor must contain over 51% of the fruit/vegetable component of the juice, by volume, from U.S. origin.

2) Does the Buy American provision apply to entities that purchase on behalf of an SFA, such as a purchasing cooperative or a food service management company?

Answer: Yes. Any entity that purchases food or food products on behalf of the SFA must follow the same Buy American provisions and exceptions that the SFA is required to follow.

3) Are all agricultural commodity or food products purchased using the nonprofit food service account subject to the Buy American provision?

Answer: Yes. SFAs must ensure that all agricultural commodity or food products procured using funds from the nonprofit school food service account comply with the Buy American provision. Pursuant to Child Nutrition Program regulations, all Federal funds, all money received from children as payment for program meals, all proceeds from the sale of competitive foods, and all other income generated by the school food service must accrue to the nonprofit food service account. As a consequence, the entire nonprofit school food service account becomes subject to Federal procurement standards. Therefore, all agricultural commodity or food product purchases made from the nonprofit school food service account are subject to the

Buy American provision, subject to the limited exceptions noted in the memorandum above.

4) What can an SFA do to comply with the requirements of the Buy American provision?

Answer: To ensure compliance with the Buy American provision the SFA must ensure solicitations and contracts include the requirement for domestic agricultural commodities and products, include this requirement in its documented procurement procedures, and retain records documenting any exceptions. Examples of specifications that SFAs may use in solicitations and contracts to comply with the Buy American provision include:

- Utilizing the Buy American definitions in 7 CFR 210.21(d) in all food product specifications, invitations for bids (IFBs), and requests for proposals (RFPs) for food products, contracts, purchase orders, and other procurement documents issued;
- Require a certification of domestic origin for products which do not have country of origin labels; and
- Including the following language: “The District/State agency/Territory participates in the National School Lunch Program and School Breakfast Program and is required to use the nonprofit food service funds, to the maximum extent practicable, to buy domestic commodities or products for Program meals. A ‘domestic commodity or product’ is defined as one that is either produced in the U.S. or is processed in the U.S. substantially using agricultural commodities that are produced in the U.S. as provided in 7 CFR 210.21(d).”

Additionally, SFAs are required by 2 CFR 200.318(b) to monitor contractor performance to ensure compliance with all contractual requirements. This includes compliance with the Buy American provision. SFAs can also require their suppliers to provide certification of domestic origin on food products delivered and on invoices submitted as discussed in more detail in Questions 6 and 7, below.

For example, Program operators may require vendors to provide a certification of domestic origin for all food products listed in all procurement documentation, from a bid or proposal to receipts and invoices. Program operators may deem a bid or response unresponsive and ineligible for contract award for noncompliance with the terms and conditions of contract award, if such certifications are solicited for, but not included. Further, the program operator may establish penalties, including contract termination, if vendors fail to comply with the Buy American provision and no documentation of any exceptions exists.

5) How can SFAs comply with the requirement to retain records, which should include documentation of exceptions in adhering to the Buy American provision?

Answer: Below is sample language that SFAs should use in solicitations and contracts to comply with the requirement to retain records documenting any exceptions to the Buy American provision:

- I. Exceptions to the Buy American provision are very limited; however, an alternative or exception may be approved upon request. To be considered for an alternative or exception, the request must be submitted in writing to a designated official, a minimum of ___day (s) in advance of delivery. The request must include the:

- (1) Alternative substitute(s) that are domestic and meet the required specifications:
 - (a) Price of the domestic food alternative substitute(s); and
 - (b) Availability of the domestic alternative substitute(s) in relation to the quantity ordered.
- (2) Reason for exception: limited/lack of availability or price (include price):
 - (a) Price of the domestic food product; and
 - (b) Price of the non-domestic product that meets the required specification of the domestic product.

SFAs may document exceptions by maintaining records of communications between them and their food supplier; this may include emails, documentation of telephone communications, etc. The documentation must be maintained for review by the State agency during procurement reviews of local agency procurement practices.

One resource SFAs and State agencies may use in order to document exceptions is the market news reports available from AMS. AMS provides free, unbiased price and sales information on farm commodities at: <https://marketnews.usda.gov/mnp/fv-report-config-step1?type=termPrice>. Using this website, SFAs and State agencies can find third-party verification of cost and availability of domestic and nondomestic foods. Further, SFAs may use the information to communicate alternatives with food suppliers and document purchase decisions.

6) What is sample language contractors can use to document their compliance with the Buy American provision?

Answer: Below is sample language contractors may use to comply with the Buy American provision; however, language should be tailored to the needs of the contracting parties.

Sample Language:

“We certify that ___(insert product name)___ was processed in the U.S. and contains over 51% of its agricultural food component, by weight or volume, from the U.S.,” with space for the supplier to fill in the name of the product and its specific percentage of the domestic agricultural food component contained therein.

7) How should an SFA document the domestic commodity food components for a processed end product?

Answer: SFAs should ask the supplier, i.e., manufacturer or distributor, for specific information about the percentage of U.S. content in the processed end product. In order for SFAs to be able to document the domestic content, they should include in their bidding process a requirement for certification such as: “We require that suppliers certify the food product was processed in the U.S. and certify the percentage of U.S. content, by weight or volume, in the food component of processed food products supplied to us.”

SFAs may also include the following statement in the bidding process: “We require bidders to certify that ___(insert product name)___ was processed in the U.S. and contains over ___(insert % of weight or volume) of its agricultural food component from the U.S.,” with

space for the supplier to fill in the name of the product and its percentage of the domestic agricultural food component (by weight or volume) contained therein.

State agencies should also include such language in any prototype solicitation documents and contracts provided to the SFAs.

8) Can a product made from a U.S. agricultural product but manufactured in another country be purchased from the nonprofit school food service account absent a limited exception?

Answer: No. Section 12(n) of the National School Lunch Act defines “domestic commodity or product” as one that is produced and *processed* in the U.S. substantially using agricultural commodities that are produced in the U.S.” This means that the product must be processed entirely in the U.S. and must substantially use domestic agricultural commodities. A large number of items received by schools state on the label that they are “packed” in the U.S. Non-domestic foods packed in the U.S. or non-domestic foods in packaging produced in the U.S. do not meet the Buy American requirements.

9) Can FNS or a State agency provide a list of foods that are not available domestically and therefore not subject to the Buy American provision?

Answer: No. Neither FNS nor a State agency may make the determination that a domestic commodity or product is not available. Although the Federal Acquisition Regulations (FAR) contain such a list, this applies to procurement by the Federal government only. Each SFA should determine on an individual basis, whether domestic alternatives exist first, and if not, whether an exception is warranted. Exceptions are warranted only when (1) the food product is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality; or (2) competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product. Again, there is not a specific amount or percentage that is considered “significantly higher” and it is the SFA’s responsibility to determine the threshold. Records and documentation must be retained justifying any exception as outlined above. SFAs can maintain documentation of exceptions for domestic foods that are prohibitively costly or not available in sufficient quantities and present this during reviews by the State agency.

SECTION V ATTACHMENTS

EXHIBIT 3

Solicitation No. RFP 23-0007

Equivalent Product Request Process and Deadlines

If the item specifications indicate "or equal" proposers may offer products equivalent to those identified on the Attachment – Price Schedule (See SECTION V - ATTACHMENTS). The District will review equivalent products for approval via the Equivalent Product Request Process. **Products submitted that do not follow this process will NOT be evaluated.**

In making a request the Proposer represents they have personally investigated the substitute/equivalent product and determined that it is equal or superior in all respects to that specified.

IMPORTANT: Only one (1) equivalent item per proposal item may be submitted for evaluation. Submitting more than one (1) equivalent item per proposal item may result in the rejection of all the equivalent items submitted for the proposal item.

DO NOT submit samples with the Equivalent Product Request, samples will be requested by the District if it is deemed necessary.

The determination of equivalency shall be based solely on the opinion of the District.

DEADLINES FOR SUBMITTING SUBSTITUTE/EQUIVALENT PRODUCT REQUESTS

Equivalent product requests, required documents and samples submitted after the dates below will NOT be accepted and the equivalent product request will not be approved.

1. Equivalent product request documents due – 1:00 PM, Thursday, November 30, 2023
IMPORTANT: Due to Thanksgiving Break Equivalent Product Request documents must NOT arrive November 20th, 2023 through November 24th, 2023.
2. Equivalent product request samples due – 1:00 PM, Thursday, January 25, 2024
IMPORTANT: Due to Winter Break samples must NOT arrive December 18th, 2023 through January 1st, 2024.
3. Final Price Schedule with all approved items posted – February 5, 2024

EQUIVALENT PRODUCT APPROVAL REQUEST PROCESS

1. Complete and submit required documents.
 - a. **ALL required equivalent product request documents MUST be provided in an electronic format on a USB flash drive. NO HARD COPIES WILL BE ACCEPTED.**
 - i. Acceptable formats are:
 - A. PDF
 - B. Microsoft Word
 - C. Microsoft Excel
 - ii. **Naming Convention for Files.** Files MUST be named using the following naming convention, failure to use this convention may result in the Equivalent Product Request not being evaluated.
 - A. RFP Item # - document type code(s) (multiple codes to be used if more than one document type is in the file) – Manufacturer Name – Manufacturer Product Code – Product Name
 - (i) Example 1: C1 – ER – Widget Co. – 9876 – Spicy Widgets
 - (ii) Example 2: C1 – NF-IL-PF – Widget Co. – 9876 – Spicy Widgets

SECTION V ATTACHMENTS

EXHIBIT 3

Solicitation No. RFP 23-0007

(iii) Example 3: P1 – PS – Widget Co. – 9936 – Paper Towel

B. Document type codes:

(i) Equivalent Product Request form – ER

(ii) Nutrition Facts – NF

(iii) Ingredients List – IL

(iv) CN Label – CN

(v) Product Formulation Statement – PF

(vi) Preparation Instructions – PI

(vii) Buy American Statement - BA

(viii) Product Specification – PS (required for non-food items only)

b. Equivalent Product Request Form (See SECTION V - ATTACHMENTS).

i. Proposals for equivalent products will only be considered when provided on this completed and **signed** form for **EACH** item submitted as an equivalent product.

ii. Equivalent products offered without this form will be rejected.

iii. Combined requests will be rejected. One (1) form is required per equivalent product submitted.

c. Required product information.

i. The required documents must be **current within the last three (3) years or;**

ii. they must be accompanied by a signed statement from the manufacturer guaranteeing that the information is still current and accurate.

iii. **Food Items.**

A. Nutrition Facts Label

B. Ingredient List

C. CN Label OR the appropriate Product Formulation Statements

D. Preparation Instructions

E. Buy American Statement – either a statement from the manufacturer stating whether or not the item meets the Buy American provision or a product specification that states the country of origin for the agricultural portion of the item.

iv. **Non-Food Items.**

A. Each individual Equivalent Product Request form for a non-food items shall be accompanied by Product Specification detailing the specifications of the product being offered.

(i) See examples of acceptable product data sheets Exhibit - Plastic Fork Data Sheet Spoons and Exhibit – Dish Detergent Data Sheet label (See SECTION V - ATTACHMENTS).

2. District review of submitted requests.

a. The District will review all submitted requests and determine which items will require samples.

b. The decision to request samples is at the sole discretion of the District and will be determined using the District's knowledge of and or past experience with a product.

3. Submit **REQUESTED** samples. **Samples are NOT required unless the District requests them.**

a. Sample shipping Containers **MUST** be labeled with the District's sample label, Attachment – Equivalent Product Request Sample Label (See SECTION V - ATTACHMENTS).

b. Samples will be submitted at no charge to the District.

SECTION V ATTACHMENTS

EXHIBIT 3

Solicitation No. RFP 23-0007

- c. If not destroyed or mutilated in testing, samples will be either disposed of by the District or retained to determine that the quality of items delivered are comparable to the sample.
 - d. Multiple samples may be shipped in one container.
 - e. Minimum quantities
 - i. Food Items
 - A. A minimum of 25 servings.
 - ii. Non-Food Items
 - A. Minimum of 5 eaches.
 - iii. Documents and required information to accompany ALL samples and must be affixed to the sample packaging. **Failure to include these documents and information may result in the sample not being evaluated.**
 - iv. Copy of the original Equivalent Product for the item
 - A. Proposers Name
 - B. Solicitation Number
 - C. Manufacturer Name
 - D. Manufacturer Code
 - E. Item Name
 - F. RFP Item # from Attachment - Price Schedule.
4. Equivalent Product Request forms and supporting documents and Samples shall be submitted to:
- a. **USB Flash Drive with Forms and Documents**
 - i. USB flash drive or package containing the flash drive must be identified with the RFP number and the Proposers Name.
 - ii. Purchasing Manager
Beaverton School District
1260 NW Waterhouse Ave.
Beaverton, OR 97006
 - b. **Samples**
 - i. Nutrition Services
Attn: Dan Kolp
10740 NW Walker Rd, Entrance D1
Hillsboro, OR 97006

EVALUATION OF PRODUCTS. The determination of equivalency shall be based solely on the opinion of the District.

- 1. Food Items.
 - a. Substitute/equivalent products offered will be evaluated and approved based on the District's knowledge and experience with an item or comparison of the proposed substitute/equivalent product's nutritional information and/or child nutrition label information, ingredients list, appearance, and taste to that of the specified product.
- 2. Non-Food Items
 - a. Substitute/equivalent products offered will be evaluated and approved based on the District's knowledge and experience with an item or on a comparison of the proposed substitute/equivalent product's intended purpose and product data sheet to that of the specified product.

Exhibit 4

RFP 23-0007

Plastic Fork Data Sheet

🔍 Specifications



Mfg.#: PFM21

GP PRO Dixie® Medium-Weight Polypropylene Plastic Fork, White

1 Box @ 1,000 Pieces , 1000 Pieces , Piece Length 6.000"

Product Details

Brand Owner	Dixie® Products
Brand	Dixie®
MFG Part#	PFM21
Color	White
UP - UPC	078731350923
Each Per Ship Unit	1 Box
Items Per Each	1,000 Pieces
Case Total	1000 Pieces
Piece Length	6.000"
UNSPSC	52151503
Capacity	
Kosher	No
Material	Polypropylene
LEED O&M	
Buy Multiple	15 CS

Case Shipping Info

Case GTIN	00078731350923
Case Gross Wgt	5.428 LBS
Case Net Wgt	4.580 LBS
Case Dimensions (LxWxH)	13.993" x 8.283" x 5.550"
Case Volume	0.372 CFT

Unit Shipping Info

TI-Qty/Layer	15
HI-Layers/Unit	8
Unit Qty	120
Unit Dimensions (LxWxH)	42.478" x 41.912" x 44.640"

Exhibit 5
RFP 23-0007

Beaverton School District Delivery Location Information

* Sites marked as having a delivery location conflict MUST be avoided at least 15 minutes either side of School Start and End Times

School	Phone	Address	School Start	School End	Delivery Location Conflict	Staff Start Time	Staff End Time	Additional Notes
ACMA Option	503-356-3682	11375 SW Center St Beaverton, OR 97005	7:30 AM	2:05 PM	x	6:00 AM	1:30 PM	Delivery must not occur between 1:30 and 2:20 deliveries can occur up to 3pm.
Aloha HS	503-356-2781	18550 SW Kinnaman Rd. Beaverton 97078	7:45 AM	2:30 PM		6:00 AM	1:30 PM	
Aloha Huber Park K-8	503-356-2009	5000 SW 173rd Ave Beaverton OR 97007	8:30 AM	3:05 PM		6:00 AM	2:30 PM	
BASE HS	503-356-3641	18640 NW Walker Rd, Beaverton, OR 97006	7:30 AM	2:05 PM		5:30 AM	9:30 PM	
Barnes ES	503-356-2138	13730 SW Walker Rd Beaverton OR 97005	8:00 AM	2:35 PM	x	6:30 AM	2:00 PM	
Beaver Acres ES	503-356-2027	2125 SW 170th Ave, Beaverton, OR 97006	8:30 AM	3:05 PM	x	7:00 AM	2:30 PM	
Beaverton HS	503-356-2857	13000 SW Second St Beaverton OR 97005	7:45 AM	2:30 PM		6:15 AM	2:45 PM	
Bethany ES	503-356-2037	3305 NW 174th Beaverton OR, 97006	8:00 AM	2:35 PM	x	6:30 AM	1:30 PM	
Bonny Slope ES	503-356-2049	11775 NW McDaniel Rd. Portland, OR 97229	8:30 AM	3:05 PM		6:30 AM	1:30 PM	
Cedar Mill ES	503-356-2057	10265 N.W. Cornell Road Portland OR 97229	8:30 AM	3:05 PM	x	7:00 AM	1:30 PM	
Cedar Park MS	503-356-2572	11100 SW Park Way Portland, OR 97225	9:25 AM	3:50 PM		7:00 AM	2:30 PM	
Chehalem ES	503-356-2067	15555 SW Davis Road Beaverton, OR 97007	8:30 AM	3:05 PM	x	7:00 AM	2:30 PM	
Conestoga MS	503-356-2587	12250 SW Conestoga Dr. Beaverton OR 97008	9:15 AM	3:50 PM	x	7:00 AM	3:30 PM	
Cooper Mountain ES	503-356-2077	7670 SW 170th Avenue Beaverton OR 97007	8:30 AM	3:05 PM	x	7:00 AM	2:30 PM	
Elmonica ES	503-356-2087	16950 SW Lisa St. Beaverton, Oregon 97006	8:30 AM	3:05 PM	x	7:00 AM	2:30 PM	
Errol Hassell ES	503-356-2097	18100 SW Bany Road Beaverton OR 97007	8:00 AM	2:35 PM		6:30 AM	2:00 PM	
Findley ES	503-356-2108	4155 NW Saltzman Road Portland OR 97229	8:30 AM	3:05 PM		7:00 AM	2:00 PM	
Fir Grove ES	503-356-2117	6300 S. W. Wilson Ave. Beaverton OR 97008	8:00 AM	2:35 PM	x	6:30 AM	1:30 PM	
Five Oaks MS	503-356-2613	1600 NW 173rd Ave. Beaverton OR 97006	9:15 AM	3:50 PM		7:00 AM	3:30 PM	
Greenway ES	503-356-2127	9150 SW Downing Drive Beaverton OR 97008	8:30 AM	3:05 PM	x	6:45 AM	1:15 PM	
Hazeldale ES	503-356-2017	20080 SW Farmington Road Beaverton OR 97007	8:30 AM	3:05 PM	x	7:00 AM	2:30 PM	
Highland Park MS	503-356-2632	7000 SW Wilson Ave. Beaverton OR 97008	9:15 AM	3:50 PM		7:00 AM	2:30 PM	
Hiteon ES	503-356-2148	13800 SW Brockman Rd Beaverton OR 97008	8:00 AM	2:35 PM	x	6:30 AM	2:00 PM	
International School of Beaverton Option	503-356-3705	17770 SW Blanton St. Beaverton OR 97007	7:30 AM	2:05 PM		6:00 AM	1:30 PM	
Jacob Wismer ES	503-356-2158	5477 NW Skycrest Parkway Portland OR 97229	8:30 AM	3:05 PM		6:45 AM	1:45 PM	
Kinnaman ES	503-356-2427	4205 SW 193rd Ave Beaverton OR 97007	8:30 AM	3:05 PM	x	6:30 AM	2:00 PM	
Mckay ES	503-356-2177	7485 S.W. Scholls Ferry Road Beaverton OR 97008	8:30 AM	3:05 PM		7:00 AM	1:30 PM	
Mckinley ES	503-356-2188	1500 NW 185th Ave Beaverton OR 97006	8:30 AM	3:05 PM	x	TBD	TBD	
Meadow Park MS	503-356-2654	14100 SW Downing St. Beaverton OR 97006	9:15 AM	3:50 PM		7:00 AM	2:30 PM	

Exhibit 5
RFP 23-0007

* Sites marked as having a delivery location conflict MUST be avoided at least 15 minutes either side of School Start and End Times

School	Phone	Address	School Start	School End	Delivery Location Conflict	Staff Start Time	Staff End Time	Additional Notes
Merlo Station HS Option	503-356-3662	1841 SW Merlo Drive Beaverton, OR 97006	7:30 AM	2:05 PM		6:00 AM	1:30 PM	
Montclair ES	503-356-2197	7250 SW Vermont St, Portland, OR 97223	8:30 AM	3:05 PM		7:00 AM	1:30 PM	
Mountain View MS	503-356-2673	17500 SW Farmington Rd. Beaverton, OR 97007	9:15 AM	3:50 PM		7:00 AM	3:30 PM	
Mountainside HS	503-356-3519	12500 SW 175th Ave Beaverton, OR 97007	7:45 AM	2:30 PM		6:00 AM	2:30 PM	
Nurition Services Central Office	503-356-3960	18640 SW Walker Rd ENTRANCE D1 Beaverton, OR 97006	6:00 AM	3:30 PM		6:00 AM	3:30 PM	
Nancy Ryles ES	503-356-2407	10250 SW Cormorant Drive Beaverton, OR 97007	8:30 AM	3:05 PM	x	7:00 AM	2:30 PM	
Oak Hills ES	503-356-2417	2625 NW 153rd Avenue Beaverton, OR 97006	8:00 AM	2:35 PM		7:00 AM	1:30 PM	
Raleigh Hills K-8	503-356-2186	5225 SW Scholls Ferry Road Portland, OR 97225	8:30 AM	3:05 PM		6:30 AM	2:00 PM	Until Further Notice Delivery MUST occur before 12:00 Noon!!!!
Raleigh Park ES	503-356-2507	3670 SW 78th Avenue Portland, OR 97229	8:30 AM	3:05 PM		7:00 AM	2:00 PM	
Ridgewood ES	503-356-2447	10100 SW Inglewood St Portland, OR 97229	8:30 AM	3:05 PM		7:00 AM	1:30 PM	
Rock Creek ES	503-356-2457	4125 NW 185th Ave, Portland, OR 97229	8:30 AM	3:05 PM	x	7:00 AM	2:30 PM	
Sato ES	503-356-2538	7775 NW Kaiser Rd Portland, OR 97229	8:30 AM	3:05 PM	x	7:00 AM	2:00 PM	
Scholls Heights ES	503-356-2467	16400 SW Loon Dr Beaverton, OR 97007	8:30 AM	3:05 PM		7:00 AM	2:00 PM	
Sexton Mountain ES	503-356-2477	15645 SW Sexton Mountain Drive Beaverton, OR 97007	8:30 AM	3:05 PM	x	7:00 AM	2:00 PM	
Southridge HS	503-356-2930	9625 SW 125th Beaverton, OR 97008	7:45 AM	2:30 PM		5:30 AM	2:00 PM	
Springville K-8	503-356-2487	6655 NW Joss Avenue Portland, OR 97229	8:30 AM	3:05 PM		TBD	TBD	
Stoller MS	503-356-2690	14141 NW Laidlaw Rd, Portland, OR 97229	9:15 AM	3:50 PM	x	7:00 AM	2:30 PM	
Sunset HS	503-356-2980	13840 NW Cornell Rd. Portland, OR 97229	7:45 AM	2:30 PM		6:00 AM	2:30 PM	
Terra Linda ES	503-356-2497	1998 NW 143rd, Portland, OR 97229	8:30 AM	3:05 PM	x	7:00 AM	1:30 PM	
Tumwater	503-356-27??	650 NW 118th Ave, Portland, OR 97229	9:15 AM	3:50 AM	x	7:00 AM	2:30 PM	
Vose ES	503-356-2438	11350 S.W. Denney Rd Beaverton, OR 97008	8:00 AM	2:35 PM	x	6:45 AM	2:15 PM	
West TV ES	503-356-2517	8800 SW Leahy Road Portland, OR 97225	8:30 AM	3:05 PM		7:00 AM	1:30 PM	
Westview HS	503-356-3059	4200 NW 185th Ave. Portland, OR 97229	7:45 AM	2:30 PM		5:45 AM	2:15 PM	
Whitford MS	503-356-2711	7935 SW Scholls Ferry Rd. Beaverton, OR 97008	9:15 AM	3:50 PM		7:00 AM	2:30 PM	
William Walker ES	503-356-2527	2350 SW Cedar Hills Blvd Portland, OR 97225	8:30 AM	3:05 PM		6:30 AM	2:00 PM	

Exhibit 6
RFP 23-0007

Manufacturer	District Name	BSD #	Manufacturer Product Code	24-25 Estimated Quantity
Jennie-O	Frank Turkey Smoked Uncured Commodity	1873	612620	261
Jennie-O	Turkey Sliced 12 LB	1706	209903	244
JM Smucker	Sandwich PBJ Grape Large Commodity	1593	5150021027	689
JM Smucker	Sandwich PBJ Grape Small Commodity	1594	5150006960	1094
JM Smucker	Sandwich PBJ Strawberry Large Commodity	1596	5150021028	735
JM Smucker	Sandwich PBJ Strawberry Small Commodity	1597	5150006961	1003
JTM	Beef Patty Breaded Commodity	2155	CP5695	349
JTM	Beef Steak Patty Commodity	1775	CP5670	1162
JTM	Beef Taco Filling Commodity	2161	CP5249	658
JTM	Sauce Spaghetti Commodity	1608	CP5578	370
JTM	Cheese Cheddar Sauce Golden Hatch Queso RS Commodity	2367	5738	716
JTM	Cheese Cheddar Sauce Premium RS Commodity	2366	5734	436
JTM	Sauce Alfredo RS Commodity	2368	5741	99
Land O Lakes	Cheese American Sliced Commodity	1155	46253	371
Land O Lakes	Cheese Cheddar Shredded Commodity	1160	41749	270
Land O Lakes	Cheese String Mozzarella Commodity	1782	59703	718
Land O Lakes	Macaroni and Cheese RS Commodity	2370	43274	1173
National Food Group	Applesauce Cup Cinnamon Commodity	1027	A1410	795
National Food Group	Applesauce Cup Strawberry Commodity	1029	A1490	981
Peterson Farms	Applesauce Cup Plain Unsweetened Commodity	2158	ASA10001	542
Roadrunner	Pizza Cheese Roadrunner Commodity	1554	10015-SC	6125
Schwan's	Breadstick Cheese Stuffed Commodity	2159	73338	2158
Tyson	Beef Rib Pattie w/Honey BBQ Sauce Commodity	1872	10000013716	303
Tyson	Beef Teriyaki Bites Commodity	1073	10000013740	671
Tyson	Chicken Corn Dog Commodity	2049	10363650928	874
Tyson	Chicken Drumstick Breaded Commodity	1878	16660100928	167
Tyson	Chicken Grilled Filet MWWM Commodity	2284	10703220928	33
Tyson	Chicken Mega Mini Nashville Hot Commodity	1937	10286860928	389
Tyson	Chicken Nugget Golden Crispy Commodity	2163	10703640928	774
Tyson	Chicken Patty Crispy Commodity	1180	10703040928	1112
Tyson	Chicken Patty Spicy Commodity	1181	10703140928	915
Tyson	Chicken Popcorn Homestyle Commodity	2162	10029400928	949
Tyson	Chicken Strips Fajita Seasoned Commodity	2050	10035220928	258
Tyson	Chicken Tender Crispy Commodity	1186	10703340928	789
Tyson	Chicken Tender Spicy Commodity	1188	10703440928	300
USDA	Beans Garbanzo USDA	2051	100360	259
USDA	Beans Green USDA	1066	100307	262
USDA	Berries Mixed Frozen Cup USDA	1894	110859	203
USDA	Blueberries IQF Frozen USDA	1940	110623	322
USDA	Broccoli Frozen USDA	2054	110473	35
USDA	Chicken Diced USDA	2056	100101	215
USDA	Corn Whole Kernel Frozen USDA	1212	100348	538
USDA	Cranberries Dried Individual Portions USDA	1932	110723	106
USDA	Fish Sticks Alaska Pollock Breaded USDA	1915	110851	211

Exhibit 6

USDA	Fruit Mixed Extra Light Syrup USDA	1788	100212	889
USDA	Peach Cling Diced USDA	1498	100220	1328
USDA	Peach Cup Frozen USDA	1890	100241	197
USDA	=SUBTOTAL(109,B2:B48)	1933	110854	113
USDA	Pear Diced Extra Light Syrup USDA	1512	100225	885
USDA	Peas Frozen 12/2.5 USDA	2248	110763	58
USDA	Raisins Individual Box USDA	1583	100293	400
USDA	Salsa Tomato Pouch USDA	2347	110186	268
USDA	Sauce Tomato USDA	TBD	100334	53
USDA	Strawberries Sliced Frozen 6/5 lb USDA	2063	110860	371
	Total Cases for 24-25			35196

**Site Visit Evaluation
Total of 100 points**

Evaluator: _____

Vendor: _____

Physical Facilities:

1. Describe the receiving/loading area can product be received/loaded in inclement weather without damage to packaging?

2. Is the receiving/loading area refrigerated? **Yes No**
3. Cleanliness of floors in warehouse? **Acceptable Unacceptable**
4. Cleanliness of floors in receiving loading area? **Acceptable Unacceptable**
5. Storage of damaged product? **Acceptable Unacceptable**
6. Organization/orderliness warehouse **Acceptable Unacceptable**
7. Pest Control **Acceptable Unacceptable**
8. Shipping and delivery processes **Acceptable Unacceptable**
9. Safety **Acceptable Unacceptable**
10. Security **Acceptable Unacceptable**
11. Offices **Acceptable Unacceptable**
12. Knowledge of staff **Acceptable Unacceptable**
13. Professionalism of staff **Acceptable Unacceptable**
14. Climate control of product **Acceptable Unacceptable**

Exhibit 7
RFP 23-0007

Delivery Equipment:

1. What type of equipment is used (circle one)
Dry and refrigerated Refrigerated only Dry only
2. Do trucks have on-board computers for monitoring temperature in the storage area throughout the delivery? **Yes No**
3. Are the trucks clean? **Yes No**
4. Do the trucks have on board tracking equipment? **Yes No**

Production Facility:

1. Is product handled following food safety guidelines? **Yes No**
2. Is staff appropriately dressed (following safe food handling guidelines?) **Yes No**
3. Is the production area clean? **Yes No**
4. Is there a cleaning schedule? **Yes No**

Additional comments regarding facility:

Total Points: _____

This "Contract" is made and entered into by and between:

Contract No:

[Provider/Company Name] ("Provider") [Address]	Beaverton School District ("District") 1260 NW Waterhouse Avenue Beaverton, Oregon 97006 Attention: Business Services Purchasing
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SCOPE OF WORK: Provider will be responsible for the year-round provision and distribution of food, groceries, snacks, kitchen supplies to fifty-three (53) sites as requested by the District. The Supplier is solely responsible for the receipt, inventory, storage and distribution of USDA food and products to the District's sites ("Work"). Work is further detailed in attached Statement of Work – Exhibit B.

SUPERSEDING EFFECT: There are no covenants, promises, contracts, conditions or understandings between the Parties, either oral or written, other than those contained in this Contract. This contract and all exhibits and attachments hereto together constitute the entire Contract between the Parties (listed in order of precedence): 1) Amendments to This Contract 2) This Contract; 3) Exhibit A Terms and Conditions, Exhibit A1 Additional Terms and Conditions `4) Exhibit B – Statement of work. Exhibit C - District Solicitation (including issued addenda – included by reference), and 5) Exhibit C Provider Response to RFP 23-0007 dated [insert date]. Provider Response is hereby incorporated by reference; provided however, that Provider Response is solely for:

- (i) any statement of fees and schedule that is consistent with the terms of the Solicitation, this Contract and Exhibit A to this contract and
- (ii) any statement of Provider's and its sub-contractors' scope of services that is consistent with the remainder of this Contract, or that provides basic services in addition to those stated in this Contract.

No other provisions of any proposal are part of this Contract, including without limitation any purported limitation on liability. To the extent that a proposal term otherwise conflicts with the terms of this Contract or is not included in this Contract, such proposed terms are void and are expressly and wholly subject to the terms of this Contract. In the event of overlap or inconsistency between the provisions of such proposals and the other terms of this Contract, the provision that provides a better quality or quantity of service to Owner shall control.

CONSIDERATION: Provider shall perform/deliver the Work required, on an as needed basis, in consideration for which the District agrees to pay for the Work in a manner further described in the contract and pursuant to the proposal pricing. Individual Project Work Authorizations (PWA) are required prior to any work being performed and will be issued by the District on a requirements basis. The District is not required to make any purchases under this Contract.

CONTRACT START DATE:
CONTRACT END DATE: June 30, 202X
RENEWAL OPTION:

The contract may be renewed upon mutual Contract of the Parties for four (4) additional one (1) year terms.

DISTRICT REPRESENTATIVE:

The District Representative for this contract is: Name, Title, Email@beaverton.k12.or.us, (503)356-XXXX.

PROVIDER REPRESENTATIVE: The Provider Representative for this contract is: [Name, Title, email address, phone number]. The Provider Representative shall constitute the Provider's point of contact for all notices and other matters related to this Contract.

In consideration of the mutual covenants, stipulations and agreements, the Parties hereto do agree and acknowledge that they have read and understand this Contract and agree to be bound by its terms and conditions:

Beaverton School District <hr/> Cost Center Authority Signature _____ Date _____ <hr/> Name _____ Title _____ <hr/> Contracting Authority Signature _____ Date _____ Procurement and Contracting	[Vendor's Legal Entity Name]: <hr/> Provider Authority Signature _____ Date _____ <hr/> Name _____ Title _____ <hr/> Email _____ Phone _____
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Not a valid Contract until all signatories are complete

This contract is pursuant to Oregon Revised Statutes (ORS 279 A, B and C) and Beaverton School District Public Contracting Rules.

These terms and conditions apply to all purchases of services by or on behalf of the Beaverton School District unless specifically provided otherwise in writing.

1. **ASSIGNMENT.** The Provider may not assign, sell, dispose of, or transfer rights or subcontract Work under the Contract, either in whole or in part, without the District's prior written consent.

2. **COMPLIANCE WITH LAWS.**

Provider certifies that in performing this Contract they will comply with all applicable provisions of federal, state, and local laws, regulations, rules, and orders. Provider expressly agrees to comply with: (i) Title VI and VII of Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended, and ORS 659.425; (iv) Executive Order 11246, as amended; (v) The Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vi) The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (vii) ORS Chapter 659, as amended; (viii) all regulations and administrative rules established pursuant to the foregoing laws; (ix) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and (x) all federal and state laws governing the handling, processing, packaging, storage, labeling, and delivery of food products, if applicable. All laws, regulations and executive orders applicable to the Contract are incorporated by reference where so required by law.

3. **CHANGES.** All amendments shall be pursuant to OAR 137 047-0800. The terms and conditions contained in this Contract may not be added to, modified, superseded or otherwise altered except by a written modification signed by an authorized representative of the District and Provider.

4. **FORCE MAJEURE.** Neither the District nor Provider shall be held responsible for delay or default caused by any contingency beyond their control, including, but not limited to war or insurrection, epidemic or pandemic, strikes or lockouts by the parties' own employees, walkouts by the parties' own employees, fires, natural calamities, riots, or demands or requirements of governmental agencies other than the District.

5. **GOVERNING LAW/VENUE.** The laws of the State of Oregon shall govern this contract. Any action or suit commenced in connection with this contract shall be in the Circuit Court of Washington District or the Federal District Court for Oregon. The prevailing party shall be entitled to reasonable attorney fees and costs as awarded by the Court, including any appeal. All rights and remedies of District and Provider shall be cumulative and may be exercised successively or concurrently.

6. **INDEMNIFICATION.** Except for claims arising out of acts caused by the sole negligence of the District, its Administrators or employees, the Provider agrees to indemnify and hold harmless the District and its board members, administrators, teachers, employees and agents, from acts or omissions of any nature whatsoever of the Provider, its agents, servants and employees, causing injury to, or death of person(s) or damage to property during the term of this contract, and from any expense incident to the defense of the District there from. The Provider agrees to indemnify and hold harmless the District and its board members, administrators, teachers, employees and agents, from and to defend it against, any and all claims arising from the purchase, installation, and/or use of the equipment, articles and/or materials which are the subject of this Contract.

7. **INDEPENDENT CONTRACTOR.** The Work to be performed under this Contract are those of an independent contractor as defined in ORS 670.600. Provider represents and warrants that it is not an officer, employee or agent of the District.

8. **INSURANCE.** Before commencing work, Contractor shall procure and maintain:

- a. **WORKER'S COMPENSATION** as required by law.
- b. **EMPLOYER'S LIABILITY** in the minimum amount of \$500,000 when the Provider has employees performing Work under the contract.
- c. **COMPREHENSIVE AUTOMOBILE LIABILITY** including owned, non-owned and hired vehicles: \$2,000,000 Combined Single Limit Bodily Injury and Property Damage any one occurrence and a minimum of \$4,000,000 in the aggregate. May be waived if Provider has no vehicle while providing work under the contract.
- d. **COMPREHENSIVE GENERAL LIABILITY** to include premises operations, independent Providers, products/completed operations, and blanket contractual: \$1,000,000 Combined Single Limit Bodily Injury, Property Damage, and personal injury any one occurrence and \$2,000,000 in the aggregate. May be waived only by the District Risk Manager.

e. **CERTIFICATES OF INSURANCE.** The District, its employees, officials and agents shall be named as an Additional Insured on general liability and automobile policies and shall be provided a copy of the additional insured endorsement. Such insurance shall be primary. Certificates of Insurance shall be issued, prior to the commencement of the contract, to Beaverton School District, Attn: Risk Department, 1260 NW Waterhouse Ave, Beaverton, OR 97006. The Contractor agrees to pay for the insurance specified and agrees to provide the District with a 30 days' notice of cancellation if non-renewal occurs during the contract period. Insurance

Exhibit A – Terms and Conditions

companies must have an A rating.

- f. The District reserves the right to require additional insurance coverage, limits, and terms which will be delineated in an attachment to this Contract.
- g. This insurance shall be considered as primary insurance and exclusive of any insurance carried by Beaverton School District, and the insurance evidenced by the required certificates shall be exhausted first, notwithstanding the fact that Beaverton School District may have other valid and collectible insurance covering the same risk.

9. REPRESENTATION. Provider represents and warrants to the District that

- a. Provider has the power and authority to enter into and perform this Contract,
- b. this Contract, when executed and delivered, shall be a valid and binding obligation of Provider enforceable in accordance with its terms,
- c. the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards, and
- d. Provider shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work.

10. Responsibility for Taxes and Withholding. Provider shall be responsible for all federal or state taxes applicable to compensation paid to Provider under this Contract. The District will not withhold from such compensation any amount(s) to cover Provider's federal or state tax obligations. Provider is not eligible for any social security, unemployment insurance or workers' compensation benefits from compensation paid to Provider under this Contract.

11. SEVERABILITY. If any provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

12. Termination.

- a. Terminate For Convenience. This Contract may be terminated at any time by mutual written consent of the parties, or the District may, at its sole discretion, terminate this Contract, in whole or in part, upon 30 days' notice to Provider.
- b. The District's Right to Terminate For Cause. The District may terminate this Contract, in whole or in part, immediately upon notice to Provider, or at such

later date as the District may establish in such notice, upon the occurrence of any of the following events:

- (i) The District fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for Provider's Work;
- (ii) Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Work under this Contract is prohibited, or the District is prohibited from paying for such Work from the planned funding source;
- (iii) Provider no longer holds any license or certificate that is required to perform the Work; or
- (iv) Provider commits any material breach or default of any covenant, warranty, obligation or Contract under this Contract, fails to perform the Work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Provider's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within 10 business days after delivery of the District's notice, or such period as the District may specify in such notice.

- c. Provider's Right to Terminate for Cause. Provider may terminate this Contract upon 30 days' notice to the District if the District fails to pay Provider pursuant to the terms of this Contract and the District fails to cure within 30 business days after receipt of Provider's notice.
- d. Enforcement. Termination under any provision of this Contract shall not extinguish or prejudice the District's right to enforce this Contract with respect to any breach of a Provider warranty or any defect in or default of Provider's performance that has not been cured, including any right of the District to indemnification by Provider. If this Contract is so terminated, Provider shall be paid in accordance with the terms of the contract for services rendered and accepted.
- e. Remedies. In the event of termination pursuant to above, Provider's sole remedy shall be a claim for the sum designated for accomplishing the Work multiplied by the percentage of Work completed and accepted by the District, less previous amounts paid. If previous amounts paid to Provider exceed the amount due to Provider under this subsection,

Exhibit A – Terms and Conditions

Provider shall pay any excess to the District upon demand.

f. **Provider's Tender Upon Termination.** Upon receiving a notice of termination of this Contract, Provider shall immediately cease all activities under this Contract, unless the District expressly directs otherwise in such notice of termination. Upon termination of this Contract, Provider shall deliver to the District all documents, information, works-in-progress and other property that are or would be deliverables had the Contract been completed.

g. **Limitation of Liabilities.** Neither party shall be liable for (i) any indirect, incidental, consequential or special damages under the contract or (ii) any damages of any sort arising solely from the termination of this contract in accordance with its terms.

13. **CONFIDENTIAL INFORMATION:** Provider acknowledges that it or its employees, sub-contractors, or agents may, in the course of performing their responsibilities under this Contract, be exposed to or acquire information that is the confidential information of District or District's clients. Any and all information provided by District and marked confidential, or identified as confidential in a separate writing, that becomes available to Provider or its employees, sub-contractors, or agents in the performance of this Contract shall be deemed to be confidential information of District ("Confidential Information"). Any reports or other documents or items including software, that result from Provider's use of the Confidential Information and any Work Product that District designates as confidential are deemed Confidential Information. Confidential Information shall be deemed not to include information that: (a) is or becomes (other than by disclosure by Provider) publicly known; (b) is furnished by District to others without restrictions similar to those imposed by this Contract; (c) is rightfully in Provider's possession without the obligation of nondisclosure prior to the time of its disclosure under this Contract; (d) is obtained from a source other than the District without the obligation of confidentiality; (e) is disclosed with the written consent of the District; or (f) is independently developed by employees or agents of Provider who can be shown to have had no access to the Confidential Information.

a. **NON-DISCLOSURE.** Provider agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Provider uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other

than the provision of Work to the District under this Contract, and to advise each of its employees, sub-contractors, and agents of their obligations to keep Confidential Information confidential. Provider shall use its best efforts to assist the District in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Provider shall advise the District immediately in the event Provider learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and Provider will at its expense cooperate with the District in seeking injunctive or other equitable relief in the name of the District or Provider against any such person. Provider agrees that, except as directed by the District, Provider will not at any time during or after the term of this Contract disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Contract, and that upon termination of this Contract or at the District's request, Provider will turn over to the District all documents, papers, and other matter in Provider's possession that embody Confidential Information.

b. **INJUNCTIVE RELIEF.** Provider acknowledges that breach of this Section, including disclosure of any Confidential Information, will give rise to irreparable injury to the District that is inadequately compensable in damages. Accordingly, the District may seek and obtain injunctive relief against the breach or threatened breach of this Section, in addition to any other legal remedies that may be available. Provider acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of the District and are reasonable in scope and content.

14. **Federal Grant Regulations.** When this Contract is marked as federally funded, Provider must follow the additional terms and conditions under [2 C.F.R § 200.326 and 2 C.F.R part 200](#).

15. **NO WAIVER OF CONDITIONS.** Failure of the District to insist on strict performance shall not constitute a waiver of any of the provisions of this Contract or waiver of any other default of the Provider.

16. **SUSPENSION OF SERVICES.** The District may suspend Provider's right/obligation to provide Work without prior notice to the Provider, and at the sole discretion of District, in the event of a declared or de-facto condition which makes continued provision of the Work to be not in the best

Exhibit A – Terms and Conditions

interests of the District. The District will not be obligated to pay for Work not provided.

17. **PUBLIC HEALTH REQUIREMENTS.** The Provider shall comply with any federal, state, county, District, and/or other public health authorities' rules, requirements, procedures, and guidelines that are in effect during the term of the Contract. This requirement shall survive the Contract to the extent applicable.

18. **COUNTERPARTS.** This Contract may be executed in several counterparts, electronic or otherwise, each of which shall be an original, all of which shall constitute the same instrument.

19. **INVOICING.** Payment will be made within 30 days of receipt of a properly completed invoice for Work performed that includes the Contract number. Invoices will not be processed until Work or portion thereof included on the invoice has been satisfactorily performed. Provider shall include the District Contract number on all invoices and shall submit invoices to Accounts Payable via email to: ap@beaverton.k12.or.us.

20. **AUTHORITY.** The Provider represents and warrants that it has the power and authority to enter into and perform the Contract and that the signer of this Contract has the authority to bind and obligate the Provider.

21. **CONTINUING OBLIGATION.** Notwithstanding the expiration date of this Contract, the Provider is obligated to fulfill its responsibilities until warranty, guarantee, maintenance, and parts availability requirements have completely expired.

22. **DAMAGES.** The Provider is responsible for damage to any property, District owned or otherwise, that is a result of Provider or subcontractor negligence while work is in progress.

- a. The Provider shall be responsible for repairing and replacing anything damaged by his operations, within thirty (30) days after notification by the District.
- b. The Provide shall:
 - i. Clean, repair and/or repaint all surfaces soiled, discolored or damaged by removal of tape, adhesive or other work to match existing surfaces.
 - ii. Bear all costs associated with damage incurred during the work, which includes but is not limited to gypsum board, windows, mullions, and elevator cars.
 - iii. Report to the District any damages found prior to performing work.
 - iv. If the Provider fails to make repairs or replace damaged materials, as necessary, the District

shall deduct the amount of any damages from the Provider's payment.

- c. Should any of the Work, and such goods, materials, equipment and furnishings, be destroyed, mutilated, defaced or otherwise damaged prior to the time the risk of loss has shifted to the District, the Provider shall repair or replace the same.

23. **DELAYS IN DELIVERY.** Neither the District nor Provider shall be held responsible for delay or default caused by fire, riot, acts of God, terrorism, war or any other cause which is beyond the party's reasonable control.

24. **DISTRICT'S RIGHT TO CARRY OUT THE WORK.** If the Provider defaults or persistently fails or neglects to carry out the Work or portions of the Work in accordance with the Contract Documents, or fails to perform a provision of the Contract, the District, after 10 days' written notice to the Provider and without prejudice to any other remedy the District may have, may make good such deficiencies and may deduct the reasonable cost thereof, including District's expenses and compensation for Consultant services made necessary thereby, from the payment then or thereafter due the Provider. If payments then or thereafter due the Provider are not sufficient to cover such amounts, the Provider shall pay the difference to the District. The right of the District to carry out the Work shall not give rise to any duty on the part of the District to exercise this right for the benefit of the Provider or any other person or entity.

25. **DRUG STATEMENT.** The use of drugs, alcohol, or any tobacco products is prohibited on all District property.

26. **FOREIGN CONTRACTOR.** If the amount of the Contract exceeds ten thousand dollars (\$10,000), and if the Provider is not domiciled in or registered to do business in Oregon, the Provider shall promptly provide the Oregon Department of Revenue all information required by that Department.

27. **IDENTIFICATION OF EMPLOYEES.** Provider shall ensure that its employees have identifying uniforms or other designation of identity (ID badge, hat, coat with Provider logo/name) while on District property.

28. **INSPECTION AND ACCEPTANCE.** The quality of Work shall be subject to inspection by the District. Should it be found that the quality of the Work is not satisfactory, and that the requirements of the plans and/or specifications are not being met, the District shall issue a written notice to comply and will provide the Provider with a 'cure date'. If the Provider does not comply the District may terminate the contract after providing 30 days written notice. Within a reasonable time, all work performed and goods delivered are subject to final inspection and acceptance after delivery or completion at the District's facility. If any goods or services are defective in material or workmanship or

otherwise not in conformity with the requirements of this Contract or specifications, the District shall have the right to require correction or replacement at no additional cost to the District.

29. MANUFACTURES WARRANTIES. Manufactures warranties received by the Provider which are applicable to any goods, material equipment, parts, property and services furnished by the Provider under this Contract shall survive acceptance and payment, and shall run to the District, its successors and assigns, and shall not be deemed to be exclusive.

30. OTHER CONTRACTS. The District may undertake or award other contracts for additional work, and the Provider shall fully cooperate with such other Providers and District's employees and carefully fit its own work to such additional work as may be contracted for by the District. The Provider shall not commit or permit any act which will interfere with the performance of work by any other Provider or by District employees.

31. PROTECTION OF PERSONS AND PROPERTY. The Provider shall be responsible for all aspects of safety and safety precautions and programs in connection with the Work.

- a. The Provider shall be responsible for the protection from loss, theft, mysterious disappearance of, or damage to all goods, materials, equipment, supplies, and other items incorporated or to be incorporated into the Work; provided however, such responsibility for goods/products shall cease when such goods/products have been delivered to and received by the District.
- b. **DISTRICT-FURNISHED, PROVIDER-HANDELED ITEMS:** The Provider shall be responsible for the protection from loss, theft, mysterious disappearance of, or damage to all goods, materials, equipment, supplies, and other District-furnished items incorporated or to be incorporated into the Work, from the time the Provider accepts receipt of the items, until they are subsequently received by the District.
- c. The District shall have no responsibility for the loss, theft, mysterious disappearance of or damage to goods, equipment, tools, materials, supplies, and other personal property of the Provider or its employees, subcontractors or agents stored on District premises.

32. SECURITY CHECK: The Provider agrees that each of its employees, subcontractors' employees and principals / owners involved in the Work may, at the option of the District, be subject to a security check, at any time, through the Beaverton Police Department or other venue. The District retains the option to require the immediate removal

of any subcontractor, employee or agent. Notwithstanding the foregoing, Provider, and not the District, remains solely responsible for performing background checks on, and screening for public safety all employees, and, to the extent allowed by law, shall provide such screening methodologies and information to District upon request.

33. TERMINATION.

- a. **Terminate For Convenience.** This Contract may be terminated at any time by mutual written consent of the parties. The District may, at its sole discretion, terminate this Contract, in whole or in part, upon 30 days' notice to the Provider.
- b. **The District's Right to Terminate For Cause.** The District may terminate this Contract, in whole or in part, immediately upon notice to Provider, or at such later date as the District may establish in such notice, upon the occurrence of any of the following events:
 - i. Pricing increases pursuant to Price Escalation/De-Escalation clause.
 - ii. The District fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for Provider's Work;
 - iii. Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Work under this Contract is prohibited or the District is prohibited from paying for such Work from the planned funding source;
 - iv. Provider no longer holds any license or certificate that is required to perform the Work; or
 - v. Provider commits any material breach or default of any covenant, warranty, obligation or Contract under this Contract, fails to perform the Work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Provider's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within 10 business days after delivery of the District's notice, or such longer period as the District may specify in such notice.
- c. **Provider's Right to Terminate for Cause.** Provider may terminate this Contract upon 30 days' notice to the District if the District fails to pay Provider pursuant to the terms of this Contract and the District fails to cure within 30 business days after receipt of Provider's notice.
- d. **Enforcement.** Termination under any provision of this Contract shall not extinguish or prejudice the District's right to enforce this Contract with respect to any breach of a Provider warranty or any defect

Exhibit A – Terms and Conditions

in or default of Provider's performance that has not been cured, including any right of the District to indemnification by Provider. If this Contract is so terminated, Provider shall be paid in accordance with the terms of the contract for services rendered and accepted.

- e. Remedies. In the event of termination pursuant to above, Provider's sole remedy shall be a claim for the sum designated for accomplishing the Work multiplied by the percentage of Work completed and accepted by the District, less previous amounts paid. If previous amounts paid to Provider exceed the amount due to Provider under this subsection, Provider shall pay any excess to the District upon demand.
- f. Provider's Tender upon Termination. Upon receiving a notice of termination of this Contract, Provider shall immediately cease all activities under this Contract, unless the District expressly directs otherwise in such notice of termination. Upon termination of this Contract, Provider shall deliver to the District all documents, information, works-in-progress and other property that are or would be deliverables had the Contract been completed. Upon the District's request, Provider shall surrender to anyone the District designates, all documents, research or objects or other tangible things needed to complete the Work.
- g. Limitation of Liabilities. Neither party shall be liable for (i) any indirect, incidental, consequential or special damages under the contract or (ii) any damages of any sort arising solely from the termination of this contract in accordance with its terms.

34. **TIME IS OF THE ESSENCE.** The Provider shall achieve Completion of the Work within the time provided on the first page of the Contract. Completion shall mean the Work shall be fully complete, including all punch lists items, and all documentation, drawings and warranties required under the Contract Documents shall have been delivered to District, and all required inspections, permits and approvals for use and occupancy of the Work shall have been procured and delivered. The Provider shall at all times carry on the Work diligently, without delay and punctually fulfill all requirements of the Work.

35. **USE OF PREMISES.**

- a. Provider shall not interfere with any daily on-going building operations in areas that are scheduled for Work.
- b. All deliveries, storage of equipment or materials shall be coordinated with the Contract Manager.
- c. Provider shall confine its apparatus, the storage of materials and operation of his staff to limits established by law, ordinances, permits or directions of the District.

- d. The work site shall be kept in an orderly and safe fashion so as not to interfere with the progress of the work or the work of any other Provider or District staff.

36. **WAIVER.** The failure of either party to enforce any provision of this contract shall not constitute a waiver by that party of that or any other provision of this contract.

37. **WARRANTY.**

- a. The Provider warrants to the District that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be performed in a skillful and workmanlike manner, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Provider's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Provider, improper or insufficient maintenance, improper operation or normal wear and tear or normal usage.
- b. If, within one year after the date of Final Completion of all the Work or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Provider shall correct it according to the requirements of this subparagraph with no additional cost promptly after receipt of written notice from the District to do so. If the Provider does not promptly initiate work to correct the Work designated in the notice, the District may proceed to correct the Work, the District may dispose of materials and equipment as it sees fit, and the Provider will be liable for all costs. This obligation shall survive acceptance of the Work under the Contract and termination of the Contract, is in addition to other warranties provided by contract or law, and does not establish a time limit for damages.
- c. All implied warranties recognized by the Uniform Commercial Code apply to this Contract and the Provider shall not issue any disclaimer to the UCC.

-END OF SECTION-

EXHIBIT A1 – ADDITIONAL TERMS AND CONDITIONS

1. **LIQUIDATED DAMAGES DUE TO LATE DELIVERY, DELIVERY DELAY OR NON-DELIVERY.** Supplier will deliver the ordered product to the District within the District Representative requested delivery window or a delivery window agreed upon by the District Representative and the Supplier or the Supplier's Representative.
 - a. **Disruption to operations.** Supplier understands and agrees that delay or failure by Supplier to deliver the products as agreed disrupts District-wide operations, causing the District to incur administrative, replacement or substitute, and other costs.
 - b. **Cost of disruption to operations.** Supplier further understands and agrees that, at the time of Contract execution, these costs are difficult to predict and depend, in large part, on the availability of convenient and feasible alternatives.
 - c. **Late delivery of orders.**
 - i. The parties agree that if the District determines it is being harmed by the failure to deliver product as requested, by the Supplier's repeated failure to meet the 2:00 PM PST delivery deadline without a good faith effort on the part of the Contractor or despite the good faith efforts of the Contractor to resolve the issues causing the continued tardiness may result, at the District's sole discretion, in the application of a fee in the form of \$100.00 short pay on the invoice of each District site delivered after the 2:00 PM PST delivery deadline on the scheduled day of delivery.
 1. **Off-day deliveries.** Late delivery of District requested off-day deliveries will not be considered tardy.
 2. **Notification.** The Contractor will be given notice fifteen (15) business days prior to applying the short payment fee.
 - a. If within the fifteen (15) business days following the notification of the implementation of the fee the Contractor has ten (10) consecutive days, excluding the days during the week(s) of Thanksgiving, Winter Break, and Spring Break, where all scheduled deliveries are delivered by 2:00 PM, the application of the fee will be canceled.
 3. **Lifting the tardiness fee.** The tardiness fee will be lifted after 20 (twenty) consecutive delivery days without a late delivery, or sooner if in the opinion of the District, the tardiness situation has been rectified.
 - a. Calculation of the twenty (20) business days will begin with the first delivery day after the end of the fifteen (15) business day notification/correction period.
 - d. **Delayed delivery or non-delivery of products.**
 - i. **Purchase of substitute items.** If the Contractor is unable to meet the delivery dates of products as required by the District, the District reserves the right to purchase substitutes on the open market for the non-delivered products.
 - ii. **Reimbursement of cost difference.** The Contractor must reimburse the District for any price variation between the product(s) on the contract and the price of the substituted product(s) purchased by the District. This reimbursement will take the form of either a credit to the District or a check in the amount of the difference.
 - iii. **Waiving of reimbursement.** The reimbursement for the impacted items may be waived if the Contractor can provide written documentation from their supplier that the Contractor is not at fault for the delayed or non-delivered products.
 1. The decision to accept the documentation is at the sole discretion of the District.
 - a. **Breach of contract.** Continued late delivery, delivery delays, or non-delivery of ordered product may result, at the District's sole discretion, in the Contractor being recommended

for default and breach of contract by the Contractor, which may subject the Contractor to termination under terms and conditions of this contract.

2. **CREDIT AND DISCOUNT PERIODS.** Credit and discount periods shall be computed from the date of receipt of the invoice to the date the District's check is mailed. Payment will be made within thirty (30) days after acceptance by the District of a proper invoice.
 - a. **Payment timing.** Payment shall not be made before receipt of a valid invoice.
 - b. **Additional fees and charges.** The District shall not pay any additional charges or fees unless specifically agreed to in writing by the District.
3. **PRICING.** This is a fixed price contract consisting of the Contractor's final cost of an item plus a fixed fee per item. The fixed fee cannot be a percentage. For the term of the Contract, the Contractor is required to provide landed pricing for all awarded products, temporary substitute products, and items added via an amendment that is net of all discounts, allowances, etc. that the Contractor receives from their providers. The landed price will consist of the Contractor's final cost for the item, plus the Contractor's mark-up.
4. **PRICE ESCALATION/DE-ESCALATION.** The prices quoted on the proposal must remain fixed for twelve (12) months beginning July 1st of the year the awarded contract is fully executed.
 - a. **Economic price adjustment at the time of renewal.** In approximately March of the contract year, the District will determine if a new contract will be issued for the upcoming year, at this point the Supplier may request an economic price adjustment. If the requested price adjustment exceeds the Consumer Price Index percent increase for Food Away from Home as calculated by the Bureau of Labor Statistics for the previous twelve (12) months, then the requested increase must be accompanied by documentation justifying the increase. The District may choose to not accept the price increase and re-solicit for the awarded product(s). If there is a decrease in the Consumer Price Index for Food Away from Home, then this decrease must be passed along to the District.
 - b. **District price de-escalation request.** The District Representative may request the Contractor adjust their prices at any time during the award and/or renewal period, for any reason with valid documentation (i.e. due to fluctuating market conditions in the Producer Price Index or other market indices, etc.), that produces conditions deemed favorable and to be in the best interest of the District.
 - c. **Mid-contract term economic price adjustment.** If during the Contract term market conditions arise that increase costs to the Contractor greater than the Consumer Price Index for Food Away from Home for the previous twelve (12) months, the Contractor may request an economic price adjustment. This request must occur by December 31st of the contract year and will not go into effect no sooner than February 1st of the contract year. All requests must be accompanied by documentation detailing the reasons for the requested increase. Acceptance of the requested price increase is solely at the District's discretion. If the price increase is not accepted the Contractor may request to substitute the item(s) in question with an equivalent product at a reduced price. Determination of equivalency will be solely up to the District. Acceptance of the price increase or substitute item will be at the sole discretion of the District and shall not at any point be required by the Contractor.
 - d. **Documentation for price escalation requests.** Documentation for price escalation requests shall consist of a statement, either from the Contractor or the Contractor's supplier detailing what costs have increased and by how much.
 - i. Examples.
 1. The cost of fuel for delivery vehicles has increased 7.5% over the last twelve months

- and we are requesting a price increase to offset this increase.
2. Information from a US Government entity detailing an element of agriculture that has seen significant market price increases.
 3. Invoices to the Contractor from the Contractor's providers.
5. **LOSS OF FUNDS.** In the event the District loses state or federal funds due to the Contractor's failure to provide the products on the contract or approved substitutes that meet Child Nutrition (CN) Label, Product Analysis, or Buy American Provision requirements, the Contractor must reimburse the District for all loss of said funds, and other applicable revenue. The Contractor must reimburse the District within thirty days (30) of receipt of an invoice from the District.
6. **PRICING FROM MANUFACTURERS/SUPPLIERS VIA A DISTRICT INVITATION TO BID(ITB), REQUEST FOR PROPOSAL (RFP), OR REQUEST FOR QUOTE (RFQ).** The District reserves the right to request pricing directly from manufacturers or suppliers via an ITB, RFP, or RFQ for products to be delivered to, or picked up by the Contractor. Should the District exercise this option, products will be added to the contract via amendment and the Contractor will add a markup or fixed fee to the pricing of the products the District has decided to add to the contract. The markup or fixed fee must be consistent with the markup on products on the contract. All other Contract pricing, terms, and conditions will remain unchanged.
7. **ADDING/DISCONTINUING PRODUCTS ON CONTRACT.** The District reserves the right to change the product mix during the Contract term.
- a. **New product pricing.** If new products are added, the Contractor must provide the District with the Contractor's direct cost, inclusive of all rebates, discounts, etc., and the markup amount on the product, the markup amount must be consistent with the proposed markup presented in response to this Solicitation.
 - b. **Adding items.** The District will provide the Contractor written notice of the decision to add an item to the contract a minimum of fifteen (15) business days ahead of the desired start date. The notice will include estimated usage.
 - c. **Discontinuing items.** The District will provide the Contractor with written notice of the decision to discontinue the use of an item at least fifteen (15) business days ahead of time.
 - i. If a discontinued product has been purchased solely for the use of the District, the District will deplete all inventory on hand and on Contractor purchase orders that cannot be canceled.
8. **PRICING FROM MANUFACTURERS/SUPPLIERS VIA A DISTRICT INVITATION TO BID(ITB), REQUEST FOR PROPOSAL (RFP), OR REQUEST FOR QUOTE (RFQ).** The District reserves the right to request pricing directly from manufacturers or suppliers via an ITB, RFP, or RFQ for products to be delivered to, or picked up by the Contractor. Should the District exercise this option, products will be added to the contract via amendment and the Contractor will add a markup or fixed fee to the pricing of the products the District has decided to add to the contract. The markup or fixed fee must be consistent with the markup on products on the contract. All other Contract pricing, terms, and conditions will remain unchanged.
9. **ADDING/DISCONTINUING PRODUCTS ON CONTRACT.** The District reserves the right to change the product mix during the Contract term.
- a. **New product pricing.** If new products are added, the Contractor must provide the District

with the Contractor's direct cost, inclusive of all rebates, discounts, etc., and the markup amount on the product, the markup amount must be consistent with the proposed markup presented in response to this Solicitation.

- b. **Adding items.** The District will provide the Contractor written notice of the decision to add an item to the contract a minimum of fifteen (15) business days ahead of the desired start date. The notice will include estimated usage.
- c. **Discontinuing items.** The District will provide the Contractor with written notice of the decision to discontinue the use of an item at least fifteen (15) business days ahead of time.
 - i. If a discontinued product has been purchased solely for the use of the District, the District will deplete all inventory on hand and on Contractor purchase orders that cannot be canceled.

10. PRODUCT SUBSTITUTIONS. The Contractor may request product substitutions either temporary or permanent. The District will accept these requests at its discretion. Products on the Contract must not be substituted by the Contractor without express written permission from the District.

- a. **Substitute product pricing.** All substitute items must be provided at the same or lower per unit price as the original contract item.
 - i. The unit for the pricing will be determined solely by the District.
 - ii. The Contractor may ask for a price concession on substitute items in instances where the Contractor's reason for the substitution is out of the control of the Contractor. Such a reason will be accepted at the sole discretion of the District.
 - iii. Price concessions on substitute products used to fulfill orders due to the failure of the Contractor to properly forecast usage of the contracted item are not allowed.
 - iv. At the District's request written documentation of the reason for the price concession is required. The documentation is to be provided in a mutually agreed-upon time frame. If the requested documentation is not provided within the time frame the Contractor will issue a credit for the difference between the price of the item on the contract and the substitute item.
 - v. Acceptance of requests for price concessions is solely at the discretion of the District.
- b. **Required documentation for substitute product requests.** ALL requests for substitutions must be accompanied by the following information/documentation.
 - i. Delivered price.
 - ii. Food Items
 - 1. CN Label or Product Formulation Statement
 - a. Required for items containing ingredients that are creditable under USDA NSLP nutrition guidelines.
 - 2. Nutrition Facts
 - 3. Ingredients List
 - 4. Cooking instructions if applicable.
 - 5. Buy American Statement
 - 6. Required for food items containing ingredients that are creditable under USDA NSLP nutrition guidelines.
 - iii. Non-Food Items
 - 1. Specification Sheets
- c. **Permanent substitutions.** Permanent substitutions may be requested when a manufacturer or the Contractor's supplier has discontinued a product on the contract, or if a product on the contract no longer fits the Contractor's program.
 - i. Requests for permanent substitutions must be made at a minimum of 15 business days

before the inventory of the product that is on the contract is fully depleted.

1. At the sole discretion of the District, where the price per unit of the substitute item is greater than the price per unit of the contract item, failure to provide proper notice may result in the Contractor being required to provide a credit for the difference in price between the item on the contract and the item being used as a substitute.
- ii. Requests for permanent substitutions must be accompanied by.
 1. The reason for the request.
 2. At the District's sole discretion requests for permanent substitution due to an item no longer fitting the Contractor's program may be refused and the Contractor must continue to supply the original item.
 3. Delivered pricing that must detail, the Contractor's direct cost, inclusive of all rebates, discounts, etc., and the Contractor's markup.
 4. Required documentation.
- iii. Upon request, samples of the proposed substitute item must be provided to the District at no charge and delivered within one (1) week of request. If added to the Contract, sample items may be retained by the District to determine if the quality and workmanship of the delivered items are comparable to the sample submitted. All samples provided by the Contractor not consumed in testing, or retained by the District, will be disposed of by the District.

11. ITEM AVAILABILITY, AND INVENTORY QUANTITIES.

- a. **Inventory availability.** The Contractor will maintain inventory levels of all items awarded on this Solicitation or added via amendment, that ensures product availability through the last delivery of the school year. Items that are identified for summer usage, will have inventories maintained through the entire duration of the District's summer meals programs.
- b. **Inventory quantities.** The District provides estimated quantities in the Price Schedule (see Section V – Attachments), these indefinite quantities are based on estimated usage and the average meals served to students daily. The District reserves the right to increase or decrease quantities provided in the Price Schedule at the District's sole discretion. The District will provide fifteen (15) business days' notice before increasing or decreasing expected quantities.
 - i. The Contractor shall not hold the District liable for excess inventories maintained by the Contractor. The Contractor shall not require the District to take delivery of excess inventory of any product on the contract purchased by the Contractor in anticipation of future orders.

- 12. FOOD SAFETY.** The Contractor must have and continue to have, through the Contract term, Hazard Analysis Critical Control Point (HACCP) principles incorporated in its standard operating procedures, and must maintain a HACCP plan on file that meets with District approval and must be followed. This plan must include recall/hold control procedures including but not limited to.
- a. Traceability systems in place from receipt of food products to delivery of food products to designated delivery sites.
 - b. Provision of 24 hour/7 days a week accessibility to Contractor staff in the event of a USDA Hold/Recall.

Non-confidential portions of the HACCP plan must be provided upon request, this must include traceability systems and recall/hold procedures.

- 13. STORAGE, SECURITY, AND SANITARY PRACTICES.** Throughout the Contract term, the Contractor's premises, equipment, supplies, and warehouse facilities must be maintained in conditions in compliance with the Health and Sanitation Code of the State in which the Contractor stores the food items and shall employ storage and security measures that are consistent with the good practices in the industry.
- a. **Policies and procedures.** Upon request the Contractor shall provide non-confidential policies or procedures or portions thereof, relating to storage, sanitation, and security of products and facilities maintained by the Contractor used for the provision of products to service the Contract. Requested documents must be provided within a period mutually agreed upon by the Contractor and the District.
 - b. **Theft and loss of product.** The Contractor's warehouse facilities must be maintained with safeguards to prevent theft or loss of product.
 - c. **Facilities.** The Contractor's warehouse facilities must be maintained such that the same types of foods are stored together and spaced to permit easy identification and provide accountability.
 - d. **Ownership and operation of facilities.** All products furnished in service to this contract must be warehoused in facilities owned and operated by the awarded Contractor unless specifically approved by the District Representative.
 - e. **Refrigeration and climate control.** Product temperature FOR EACH PRODUCT STORED must be maintained at a suitable temperature to maintain freshness, quality, shelf life, and nutritional value in accordance with the Health and Sanitation Code of the State in which the Contractor stores the food product.
 - f. **Food security measures.** Food security measures must be employed by the Contractor to minimize the risk that food under their control is subject to tampering, criminal, or terrorist actions.
 - g. **Sanitary practices.** The Contractor must adhere to the highest standards of cleanliness and sanitary practices, including the food distributor's employee's appearance and performance in the preparation, service, transportation, and storage of food and related products.
- 14. INSPECTION OF FACILITIES AND EQUIPMENT.** The Contractor's operations facility and or trucks shall be subject to inspection during regular business hours at a time agreed to by the Contractor and the District. If, in the reasonable opinion of the District, sanitary conditions are unsatisfactory, the Contractor will be given three (3) days to correct the conditions. If, in the sole opinion of the District, the conditions have not been satisfactorily remedied, the Contract shall be subject to cancellation. Any losses incurred by the District as a result of such cancellation shall be charged to the Contractor.
- 15. HEALTH INSPECTION.** The Contractor is required to have and maintain satisfactory health inspections from the State or local licensing agency in which the Contractor's facility(s) reside, USDA, or a USDA-recognized food safety certifying agency such as NSF.
- a. **Satisfactory health inspection.** A satisfactory health inspection is defined at the sole reasonable discretion of the District.
 - b. **Failure to maintain satisfactory health inspections.** Failure to maintain this standard without a good faith effort to resolve any critical violations, as determined at the sole discretion of the District, may result in cancellation of the Contract.
 - c. **District requests for health inspection reports.** Health inspection reports must be presented to the District within five (5) business of the request.

- 16. PRODUCT TESTING.** The District reserves the right to submit a sample of any product to an independent laboratory for analysis as listed for each product. Testing of perishable products may include monitoring acceptable chemical levels and maximum bacteria levels on designated products. Random sample testing may be performed during the Contract as required by the District. Such analysis will be paid for by the District if the product meets the specifications.
- a. **Product analysis.** If the product analysis fails to meet specifications, the Contractor will be billed for the analysis by the laboratory and must pay all such billings within thirty (30) days of receipt of the invoice. Additionally, the Contractor must immediately replace, or refund the District for all remaining affected product inventory within five (5) business days of notification. The Contractor shall be responsible for all shipping, disposal, return, and restocking fees.
 - b. **Deadlines.** In the event the five (5) business day deadline is not met, the District reserves the right to have non-compliant products shipped to and stored in commercial storage facilities at the Contractor's expense.
 - c. **Failure of the product to meet specifications/chemical and bacterial levels.** Failure of the product to meet specifications, and or acceptable chemical and bacterial levels may warrant cancellation of the contract. All products in the District's possession at the time of analysis must be removed by the Contractor and a refund issued to the District within thirty (30) days of notification.
- 17. RECYCLED MATERIALS AND SUSTAINABLE PRODUCTS AND SERVICES PROCESSES.** The Contractor must use recycled and recyclable products to the maximum extent economically feasible during the performance of the Contract. As required by Law, the District shall prefer materials or supplies manufactured from recycled material if the recycled product is available, and meets the requirements set forth in this Solicitation. The District supports and encourages the use of sustainable products by the Contractor. To contribute to a clean environment for present and future generations, the Contractor must utilize sustainable products to the maximum extent feasible during the performance of this Contract. Products and practices utilized by the Contractor shall be based upon reducing long-term environmental impact, social costs, and operational costs.
- 18. BRAND, PACK SIZE, AND PRODUCT SPECIFICATION CHANGES.** Unless a change is made by a manufacturer and a contract item is no longer available in its original form, the Contractor must not change the brand, pack size, or product specifications, including but not limited to ingredients and product formulations.
- 19. TITLE AND LIABILITY.** Excluding USDA Foods Items, title to goods shall pass to the District upon receipt and acceptance at the destinations indicated herein. Until acceptance, the Contractor retains the sole insurable interest in the goods.
- 20. SELL BY, FRESHNESS DATE, OR PULL DATE.** Products must have a minimum of fifty percent (50%) left on the sell-by, freshness date, pull date, expiration date, or shelf life at the time of delivery.
- a. For the purposes of this solicitation, any of these terms (sell by, freshness date, or pull date) shall indicate the expiration date of the product's shelf life.
- 21. NON-STOCK, REMOTE STOCK, SPECIAL-ORDER ITEMS.** The Contractor must stock all awarded products at the location from which the District's orders are fulfilled. All products must be

available to deliver on the scheduled delivery day for which they were ordered. Products specified in this Solicitation or products added by amendment must not be considered by the Contractor as non-stock, remote stock, or special order at any point during the Contract term.

22. PRIVATE LABELS ON COMMERCIAL PRODUCTS. Commercial products must not display private labels.

23. LOCALLY/REGIONALLY SOURCED PRODUCTS. The Contractor must be able to identify any products awarded or products added by an amendment, that are grown, manufactured, or processed in the State of Oregon.

a. During the Contract term, within five (5) business days of a request, the Contractor must provide reports detailing which contracted products are grown, manufactured, or processed in the State of Oregon.

24. BUY AMERICAN PREFERENCE. The Contractor must purchase for resale through the Contract, to the maximum extent practicable, domestic Food Service Products, and must comply, as applicable, and must cause each of its sub-vendors to comply, with the applicable requirements and responsibilities set forth in the Buy American Provision of federal regulations 7 CFR 210.21(d) and 7 CFR 220.16(d).

a. Domestic Food Service Products mean.

i. An agricultural commodity that is produced in the United States, and;

ii. A Food Service Product that is processed in the United States substantially using agricultural commodities that are produced in the United States.

1. As required by the Buy American provision, all products must be of domestic origin as required by 7 CFR Part 210.21(d).

2. The District participates in the National School Lunch Program and School Breakfast Program and is required to use the nonprofit food service funds, to the maximum extent practical, to buy domestic commodities or products for Program meals. A "domestic commodity or product" is defined as one that is either produced in the U.S. or is processed in the U.S. substantially using agricultural commodities that are produced in the U.S. as provided in 7 CFR Part 210.21(d).

3. Substantially means over 51% of the final processed product (by weight or volume) must consist of agricultural commodities that were grown domestically.

4. Exceptions to the Buy American provision should be used as a last resort; however, an alternative or exception may be approved upon request. To be considered for the alternative or exception, the request must be submitted in writing to the District Representative, a minimum of fifteen (15) days in advance of delivery.

a. The request must include the.

i. Reason for exception. limited/lack of availability, or price (include price). Price of the domestic food product; and the Price of the non-domestic product that meets the required specification of the domestic product.

b. Alternative substitute (s) that are domestic and meet the required specifications.

i. Price of the domestic food alternative substitute (s); and

ii. Availability of the domestic alternative substitute (s) in relation to the quantity ordered.

b. Contractor shall be responsible for providing documentation of compliance, or non-compliance with the Buy American Provision for all food products offered during the Contract term, including items used as temporary substitutions.

- i. If documentation of compliance with the Buy American Provision is not available, or the item has been identified as being non-compliant, the Contractor must submit a waiver request using Attachment – Waiver Request to Use Foreign Food Products (see Section V – Attachments). Requests will be approved at the District’s sole discretion.

- 25. SUBCONTRACTING.** Subcontracting of the Contract in part or in full is not allowed. The work as detailed in the statement of work of the solicitation and this resultant contract shall be completed solely by the awarded contractor.

- 26. TITLE HOLDER OF USDA FOODS PRODUCTS.** The District is the title holder of all USDA Foods products that the District procures, pays for, and has shipped to the Contractor from manufacturers and the ODE CNP warehouse, therefore the Contractor must not use items the District holds title to for fulfillment of orders from other customers.
 - a. **Reimbursement for Contractor usage of the District’s USDA Foods Products.** In the event the Contractor utilizes a product the District holds title to for fulfillment of orders other than the District’s, the Contractor shall reimburse the District for the full value of the product. The full cost includes the value of diverted food, processing fees, delivery fees from the processor (if not included in processing fees), and ODE CNP administrative fees.
 - i. In the event the Contractor usage results in shortages impacting District orders the Contractor will offer at no cost an equivalent item to fulfill the District’s orders. Equivalency will be determined solely by the District.

- 27. COMPENSATION FOR THE LOSS OF USDA FOODS ITEMS.** The Contractor shall be responsible for compensating the District for the full replacement value of all USDA Items lost or damaged, regardless of reason, while the items are in the possession of the Contractor. Possession is retained by the Contractor until the items are placed in the correct storage location on District property or other property as directed by the District. Frozen items are to be placed in the freezers, cooler items placed in coolers, and dry storage items placed in dry storage locations.
 - a. **Replacement value.** Replacement value will be determined solely by the District and will consist of the value of the donated food, processing fees, delivery fees from the processor (if not included in processing fees), and ODE CNP administrative fees.

- 28. INSURANCE, LETTER OF CREDIT.** Throughout the term of the contract the Contractor shall maintain insurance levels or a letter of credit appropriate to be able to compensate the District for the full value of the USDA Foods Products lost due to a catastrophic event.

- 29. SUPPLIER VIOLATION OR BREACH OF CONTRACT.** Per 2 CFR 200 Appendix II, contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 USC 1908, must address administrative, contractual, or legal remedies in instances where Suppliers violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
 - a. Except as otherwise provided for in these Terms and Conditions, either party may terminate the contract in whole or in part in the event of the other party’s substantial failure to fulfill its obligations under the contract through no fault of the terminating party; provided, however, that the defaulting party is given at least ten (10) business days prior written notice of the default and intent to terminate (delivered by certified mail, return receipt requested, or other method that similarly documents receipt), and a ten (10) business day

- opportunity to remedy the default to the satisfaction of the terminating party.
- b. The District will not be liable to the Supplier for any damages (including, but not limited to, loss of profits or loss of business, or any special, consequential, exemplary, or incidental damages) resulting from termination based on Supplier's default or breach of contract.
 - c. If any delay or failure of performance is caused by a Force Majeure, the District may, in its sole discretion, terminate the contract in whole or part, provided such termination complies with the procedures set out above. Any contract termination resulting from any cause other than a Force Majeure event will be deemed valid reason for not considering any future proposals from the defaulting Supplier.
 - d. Force Majeure includes, but is not limited to, governmental restraints or decrees, provided they affect all companies in Supplier's industry equally and are not actions taken solely against Supplier; acts of God (except natural phenomena, such as rain, wind or flood, which are normally expected in the locale in which performance is to take place); work stoppages due to labor disputes or strikes; fires; explosions; epidemics; pandemic; riots; war; rebellion; or sabotage.
 - e. The remedies under the contract are in addition to any other remedies that may be available under law or in equity. By submitting a proposal, Proposer agrees to the Supplier violation and breach of contract terms.

30. TERMINATION. As required by 2 CFR 200 Appendix II for contracts exceeding \$10,000, the Contract may be terminated for cause and convenience by the District. The District shall only be required to pay Supplier for goods or services delivered to the District prior to the termination and not otherwise returned in accordance with Supplier's return policy. If the District has paid Supplier for goods or services not yet provided as of the date of termination, Supplier shall immediately refund such payment(s).

- a. Terminate For Convenience. This Contract may be terminated at any time by mutual written consent of the parties, or the District may, at its sole discretion, terminate this Contract, in whole or in part, upon 30 days' notice to Supplier.
- b. The District's Right to Terminate For Cause. The District may terminate this Contract, in whole or in part, immediately upon notice to Supplier, or at such later date as the District may establish in such notice, upon the occurrence of any of the following events:
 - i. The District fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for Supplier's Work; Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the Work under this Contract is prohibited, or the District is prohibited from paying for such Work from the planned funding source;
 - ii. Supplier no longer holds any license or certificate that is required to perform the Work; or
 - iii. Supplier commits any material breach or default of any covenant, warranty, obligation or agreement under this Contract, fails to perform the Work under this Contract within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Supplier's performance under this Contract in accordance with its terms, and such breach, default or failure is not cured within 10 business days after delivery of the District's notice, or such period as the District may specify in such notice.
- c. Supplier's Right to Terminate for Cause. Supplier may terminate this Contract upon 30 days' notice to the District if the District fails to pay Supplier pursuant to the terms of this Contract and the District fails to cure within 30 business days after receipt of Supplier's notice.

d. Enforcement. Termination under any provision of this Contract shall not extinguish or prejudice the District's right to enforce this Contract.

31. DEFAULT. In the event of default by the Supplier of their obligations, the District reserves the right to obtain the required products elsewhere. The Supplier will be responsible for documented differences in price between for contracted product price and the replacement product purchased by the District. Compensation to the District shall be one of the following, at the sole discretion of the District.

- a. Credit to appear on the next invoice.
- b. Check reimbursing the District for the documented difference.

32. RECYCLED MATERIALS AND SUSTAINABLE PRODUCTS AND PROCESSES. Supplier will use recycled and recyclable products to the maximum extent economically feasible during the performance of the Contract. As required by Law, the District will prefer materials or supplies manufactured from recycled material if the recycled product is available, and meet the requirements set forth in the Specifications. The District supports and encourages the use of sustainable products by the Supplier. To contribute to a clean environment for present and future generations, Supplier will utilize sustainable products to the maximum extent feasible during the performance of this Contract. Products and practices utilized by the Supplier will be based upon long-term environmental impact, social costs, and operational costs.

33. RECALL PROCEDURE. The Supplier must have and maintain a recall policy/procedure as part of their standard operating procedures.

34. PROGRAM REGULATIONS. The Supplier shall be in conformance with the applicable portions of the District's Contract under the Child Nutrition Program (CNP). The Supplier will conduct program operations in accordance with 7CFR Parts 210, 215, 220, 225, 226 and 250.

35. AFFORDABLE CARE ACT. The Supplier understands and agrees that it shall be solely responsible for compliance with the patient Protection and Affordable Care Act, Public Law 111-148 and the Health Care and Education Reconciliation Act, Public Law 111-152 (collectively the Affordable Care Act "ACA"). The Supplier shall bear sole responsibility for providing health care benefits for its employees who provide services to the CNP Sponsor as required by State or Federal law.

36. RIGHT TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT. If the District's federal award meets the definition of "funding agreement" under 37 CFR 401.2(a) and the recipient or sub-recipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance or experimental, developmental, or research work under that "funding agreement," the recipient or sub recipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and District Agreements," and any implementing regulations issued by the awarding agency.

37. CONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISE AND LABOR SURPLUS AREA FIRMS. Per 2CFR 200.321, the grantee, and Supplier and prime Supplier, if sub-contracts are to be let, must take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

- a. Affirmative steps must include:

- i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists.
- ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources.
- iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises.
- iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises.
- v. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

38. RECORD KEEPING. The books and records of the Supplier pertaining to operations under this Contract shall be available to the District at any reasonable time. These records are subject to inspection or audit by representatives of the District, State Agency, the USDA, and the US General Accounting Office at any reasonable time and place. The District shall maintain such records, for a period of not less than three (3) years after the final day of the contract, or longer if required for audit resolution. (7 CFR 210.23(c), and 2 CFR Part 200.333).

39. ALTERNATE FORMATS OF WRITTEN MATERIALS. Supplier must make available to an Authorized Purchaser or the Grantor federal agency, upon the Authorized Purchaser's or the Grantor federal agency's request, any and all written materials related to the Contract in alternate formats in compliance with administrative rules or with Grantor federal agency's policies made available to Supplier by Grantor federal agency. For the purposes of the foregoing, "written materials" includes, without limitation, all work product and subcontracts related to this Contract.