

North Carolina Procurement Alliance (NCPA)

DISTRIBUTOR IFB/CONTRACT



General Terms and Conditions

Orange County Schools

Contract Period: August 1, 2024 – July 31, 2025

Approved by the NCPA Board of Directors
January 25, 2024

USDA NON-DISCRIMINATION STATEMENT

In accordance with federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, this institution is prohibited from discriminating on the basis of race, color, national origin, sex (including gender identity and sexual orientation), disability, age, or reprisal or retaliation for prior civil rights activity. Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language), should contact the responsible state or local agency that administers the program or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. To file a program discrimination complaint, a Complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form which can be obtained online at: <https://www.usda.gov/sites/default/files/documents/ad-3027.pdf>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted 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; or
2. **fax:**
(833) 256-1665 or (202) 690-7442; or
3. **email:**
Program.Intake@usda.gov

12/09/2022

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NCPA DISTRIBUTOR BID – GENERAL TERMS AND CONDITIONS

1.0 NCPA LEGAL AFFILIATION, MISSION, GOAL AND FEDERAL COMPLIANCE

- 1.1 **LEGAL AFFILIATION:** NCPA membership does not constitute a **LEGAL AFFILIATION**; it serves as a means for consolidation of bid products for mutual benefit of the member Districts and Distributors in the procurement of high-quality foods for students at the most reasonable cost.
- 1.2 **MISSION:** This School District is a voluntary participant in the **North Carolina Child Nutrition Procurement Alliance** and joins **100+ member School Districts** in the **MISSION** to procure high quality, reasonably priced products and services for federally funded Child Nutrition programs operating in North Carolina.
- 1.3 **GOAL:** The **GOAL** of the NCPA is to work together to consolidate bid products which will provide benefits that are measurable, cost - effective, and ethically applied. Purchase estimates of the NCPA membership are expected to enhance the purchasing power of this contract. Estimated quantities are not a guarantee of usage and the School District is not required to purchase product based on estimates. Estimated combined purchases of food and supplies of NCPA member districts exceeds \$160 Million.
- 1.4 **FEDERAL COMPLIANCE:** The School Nutrition Programs receiving goods and services under this Contract are federally funded programs operated under the authority of the **United States Department of Agriculture (USDA)**. This IFB and the subsequent Contract shall be **COMPLIANT** with 7 CFR Parts 210, 220, 225, 250, 2 CFR 200 and applicable cost circulars issued by the Office of Management and Budget (OMB) including A-87 Cost Principals, A -102 Administrative Requirements, and A -133 Audit Requirements.

2.0 GENERAL PROVISIONS OF THIS NCPA IFB – CONTRACT

- 2.1 **THIS SOLICITATION IS INTENDED TO PROMOTE COMPETITION.** If the language, specifications, terms, and conditions, or any combination thereof, restricts or limits the requirements in this solicitation to a sole source; it is the responsibility of the interested Distributor to notify Leann Seelman, Procurement Consultant, in writing via e-mail, at leann.seelman@dpi.nc.gov no more than **five (5) working days** after the date the IFB/CONTRACT is issued by the School District. The solicitation may, or may not, be changed, but a review of such notification will be made prior to the award of a Contract.
- 2.2 **DISTRIBUTOR CHANGES TO PRE-APPROVED MANUFACTURER BRAND/CODE:** All product brands and codes listed on this bid are pre-approved and no products may be added to the bid spreadsheets without prior approval of the NCPA Board of Directors, with appropriate addenda released to eligible Distributors.
- 2.3 **ADVERTISEMENT OF BID:** As required by the NC State Division of Purchase and Contract, solicitation for this IFB/Contract Bid has been advertised in the legal notice section of the ***Raleigh News and Observer*** and the ***Charlotte Observer*** a minimum of 10 working days in advance of the bid release.
- 2.4 **A WRITTEN ADDENDUM IS THE ONLY OFFICIAL RESPONSE METHOD WHEREBY INTERPRETATION, CLARIFICATION AND ADDITIONAL INFORMATION REGARDING THIS BID CAN BE GIVEN.** Once issued, all addenda shall become part of this contract. All addenda will be issued electronically to each Distributor known to have received the initial IFB/Contract. Addenda may be issued from the NCPA or the local school district **no later than seven (7) working days prior to the IFB/Contract due date**. However, before submitting an IFB/Contract, it shall be the responsibility of each Distributor to determine whether additional addenda were issued. **INQUIRIES** concerning interpretation or additional clarification or additional information pertaining to this IFB must be made in writing (electronic accepted) on behalf of the NCPA and the Member School Districts **no later than ten (10) working days prior to the IFB/Contract due date**. For inquiries contact Leann Seelman, Procurement Consultant, in writing via e-mail, at leann.seelman@dpi.nc.gov.
- 2.5 **DIRECT TO MANUFACTURER (DTM) PRICING:** The NCPA has secured bid “cost” pricing for numerous pre-approved food products through the **2024-2025 NCPA Direct to Manufacturer and USDA Donated Foods Processing Bid (DTM Bid)**, or through the NCPA Board approval and renewal of the 2023–2024 manufacturer’s bid awards. Awarded bid “cost” pricing is shown by line item within the bid spreadsheets.

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Awarded DTM bid prices are based on finished product weight received, including all applicable labor, materials, and shipping charges to the Distributor or to the designated School District storage facility. Distributors may negotiate FOB pricing with the manufacturer, however, the price charged to Member districts cannot exceed the delivered bid price guarantee. If minimum ship quantity cannot be met for direct delivery refer to Section 7.6 and 18.2 Special Order for ordering requirements and pricing options.

- 2.6 Manufacturer Bid Price Guarantee Letters** are provided to NCPA Distributors from the awarded manufacturers before May 1 of each year. Distributors accepting award of this bid are required to honor the DTM awarded bid pricing and products. **The Distributor Fixed Fee is charged “per case” and shall encompass the costs of the product’s receipt into storage, distribution, financing, profit, production losses, analyses cost, waste, labor, repackaging, overhead, transportation costs and ALL other costs of doing business for the line items bid in LOTS 1 through 4 and when requested, LOT 1A.** (See 8.1) Distributors will ensure volume manufacturer pricing offered under this Contract is NOT transferable, under any circumstances, to non-member NCPA school districts. NCPA product usage reports are to be used for pricing to the NCPA member school districts only.
- 2.7 COST PRICING BY ITEM:** The Distributor will solicit the BEST MANUFACTURER OR PACKER “COST” PRICING BY ITEM BID - including freight - for the longest lock in period when negotiating contract pricing for foods and supplies on the behalf of the NCPA. Line items to be bid at the best cost are highlighted in yellow on the bid spreadsheets.
- 2.8 FIRM COST-PLUS FIXED FEE BID:** This method for calculation of this bid is Firm Cost-Plus Fixed Fee. **The Distributor Fixed Fee is charged “per case” and shall encompass the costs of the product’s receipt into storage, distribution, financing and profit, production losses, analyses cost, waste, labor, repackaging, overhead, transportation costs and ALL other costs of doing business for the line items bid in LOTS 1 through 4 and when requested, LOT 1A.**
- 2.9 PRODUCT PRE-APPROVAL:** The NCPA-Board of Directors will accept Requests for Product Pre-Approval from Manufacturers for Food and Supply items throughout the year for Products Matching Current NCPA specifications and for products that are NEW to the bid and have no matching Current NCPA specification. Products that match specification criteria are moved on for student testing. NEW products are student tested and test results are used by the Board to select a limited number of NEW products to be added to the bid each year. The NCPA Board of Directors reviews test results and selects the products that will be included in the next DTM and Distributor bid pricing spreadsheets.
- 2.10 PRODUCT REMOVAL:** The NCPA reserves the right to remove a pre-approved product from the bid at any time for cause. Removal may occur for the following reasons:
- (1) Product was reformulated and no longer meets the specification
 - (2) Product quality complaints documented by member districts
 - (3) Manufacturer or Supplier failure to deliver product in a timely manner, or in a sufficient quantity to meet NCPA member district needs
 - (4) Manufacturer or supplier default of contract with NCPA or any NCPA distributor.
 - (5) Lack of sufficient usage of a line item to ensure product can be stocked by a majority of the NCPA distributors as determined by the NCPA Board

3.0 SCHOOL DISTRICT IFB – CONTRACT DECLARATIONS AND PROFILE

Orange County Schools and is herein after referred to as the **School District**, is requesting to receive Bids from an OFFERING ENTITY, herein after referred to as the **Distributor**, defined as a company that is offering to provide the services of ordering, warehousing and delivery of food and supplies for use in the School District’s School Nutrition Program. **School District may refer to a single school district, or a combined group of School Districts in a named Co-Op group.**

Orange County Schools:

- reserves the right, at any time after opening and prior to award, to request from any Distributor clarification of processes or procedures, address technical questions, items bid, or to seek other information regarding the Distributor’s bid offer. This process may be used for such purposes as providing an opportunity for the Distributor to clarify their bid, to assure mutual understanding and/or aid in determinations of responsiveness, or responsibility, of the Distributor.

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- reserves the right to exclude individual bid LOTS, other than LOT1, and use alternate local district bid documents and approved methods to award the LOT.
- reserves the right to reject any or all bids, or parts thereof, and to waive informalities and/or irregularities thereof.
- reserves the right to retain all Bids for a period of sixty (60) days or until approval by the Local Board of Education, whichever comes first. The submittal of a Bid shall constitute an irrevocable Offer to Contract with the School District. In accordance with the terms of the IFB/Contract, the offer may not be withdrawn until or unless rejected or not accepted by the School District.
- requires the IFB/Contract and all attachments and addenda hereto awarded to become the Contract between the School District and the awarded Distributor.
- reserves the right to delete selected items from LOT 1 or LOT 3 to create an optional LOT that will be advertised to potential Distributors for that Lot. This approach may be used to create additional competition and allow small Distributors to respond to the IFB. If utilized, the Optional LOT will be identified as such in the Bidding Sheets and added in the same sequence of LOT number(s) to which it applies. The award of a Local Option LOT(s) will be made by Line-Item award to the most qualified Distributor according to procedures outlined herein.
- reserves the right to add written **SPECIAL CONDITION(s)** to this IFB which details conditions that are specific to the School District. Special Condition(s) shall be titled as such and attached to the IFB in the Attachments Section. Special Conditions established by the School District as part of this IFB, and the Distributor's response to the Special Condition(s), shall become part of the Contract when awarded. A School District renewing a bid may update, or delete, Special Conditions of the original Contract; however, the District may not make changes that would substantially change the terms of the original agreement in a renewal.
- Special Conditions must be reviewed and agreed upon by the potential Distributors. Any concerns regarding the Special Conditions outlined by the School District must be addressed in writing to the School District contact by the Distributor a minimum of 10 working days **PRIOR to the Bid Due Date**. If changes are made to the Special Conditions, the School District must issue Local Addenda to all potential Distributors announcing the change a minimum of **seven (7) working days PRIOR to the Bid Due Date**.
- requires the Distributor awarded the Contract be fully acquainted with General Terms and Conditions relating to the scope and restrictions involved in the execution of the work described in this contract for the School District. Failure or omission of the Distributor to be familiar with existing conditions shall in no way relieve the company of obligation with respect to this Contract and may be grounds for disqualification.
- requires The Local School District issue the approved and appropriately signed **Official Certification Form** to the Awarded Distributor and the issue of a local **Purchase Order** to the Distributor as the **Final Bid Award**.
- will provide a SCHOOL DISTRICT PROFILE which includes pertinent information about the district such as the school names, addresses, participation in Fresh Fruit & Vegetable Program and Summer Feeding Programs. The profile is found in the Attachments section of the IFB/Contract.

4.0 DISTRIBUTOR MINIMUM QUALIFICATIONS

Distributor awarded the Contract must have a minimum of one (1) year of experience in commercial food warehousing/delivery business and must maintain all required state and local business licenses and a Certificate of Authority from the Secretary of State of North Carolina. Distributor shall provide documentation of applicable license, certification, commercial experience, storage and delivery equipment and/or letters of current customer and supplier reference upon request of the School District for qualification to furnish products and services in accordance the General Terms and Conditions of this IFB. The School District reserves the right to make the final determination as to the Distributor's ability to provide the products and services requested herein.

https://www.sosnc.gov/Guides/launching_a_business/register_your_business

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5.0 DISTRIBUTOR INSURANCE REQUIREMENTS

- 5.1 The Distributor awarded the Contract shall maintain all necessary insurance for the period during which purchases are made, including Comprehensive General Liability Insurance, Property Damage Insurance, Workers Compensation Insurance, and Automobile Liability Insurance. The Distributor must provide **Evidence of Insurance** that it currently has, and agrees to purchase and maintain, during its performance under this Contract, from one or more insurance companies authorized to do business in the State of North Carolina.
- 5.2 **Certificates of such Insurance** shall be furnished by Provider to the School District Contact and shall contain an endorsement to provide the School System written notice of any intent to cancel or terminate by either Provider or the insuring company. Failure to furnish insurance certificates or maintain such insurance shall be a default under this contract and shall be grounds for immediate termination of this Contract. **ATTACHMENT C** - provide summary and mail certificates to school district.
- 5.3 **Commercial General Liability** – Distributor shall maintain Commercial General Liability insurance that shall protect the Distributor from claims of bodily injury or property damage which arise from performance under this Contract in the amount of \$1,000,000 each occurrence and Personal & Advertising Injury \$1,000,000 each occurrence with \$2,000,000 General Aggregate.
- 5.4 **Vehicle Bodily Injury and Property Damage** - The Distributor shall maintain bodily injury and property damage liability insurance covering all owned, non-owned and hired vehicles. The policy limits of such insurance shall not be less than \$1,000,000 combined single limit each person/each occurrence.
- 5.5 **Worker's Compensation** - The Distributor shall meet the statutory requirements of the State of North Carolina for worker's compensation coverage and employer's liability insurance of all employees participating in the provision of services under this contract.
- 5.6 Should any of the above required insurance be cancelled or terminated before the expiration, the issuing company will provide at least ten (10) days written notice to the School District.

6.0 DISTRIBUTOR PERSONNEL REQUIREMENTS

- 6.1 The Distributor's personnel are to present a professional appearance always while on school property. Personnel shall be neat, clean, well groomed, properly uniformed and conduct themselves in a respectable and courteous manner while performing duties at any School District facilities.
- 6.2 The Distributor's personnel are forbidden to consume alcohol or use illegal drugs, use tobacco, or possess firearms on school property at any time.
- 6.3 The employment of unauthorized aliens by the Distributor is considered a violation of Section 247A (e) of the Immigration Reform and Control Act of 1986. If the Distributor knowingly employs unauthorized aliens, such a violation shall also be cause for cancellation of the Contract.
- 6.4 **NC LUNSFORD ACT N.C. GENERAL STATUTE 14-208.18:** The Distributor acknowledges that N.C. General Statute 14-208.18 prohibits anyone required to register as a sex offender under Article 27A of Chapter 14 of the General Statutes from knowingly, among other things, being on the premises of any school or within 300 feet of any location intended primarily for the use, care, or supervision of minors, including but not limited to schools, children's museums, child care centers, nurseries and playgrounds. This prohibition applies to persons required to register under Article 27A who have committed any offense in Article 7A of Chapter 14 or any offense where the victim of the offense was under the age of 16 years at the time of the offense. **LUNSFORD ACT** compliance is addressed in the **ATTACHMENT D.**

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7.0 DISTRIBUTOR BID ERRORS AND PRICING REQUIREMENTS

7.1 BID ERRORS: The following two bid errors are non – negotiable and may result in bid disqualification.

1) NO ORIGINAL SIGNATURE ON THE OFFICIAL DISTRIBUTOR BID CERTIFICATION FORM FOR A NEW OR RENEWAL BID. An Original signature in Blue Ink is preferred, but a scanned copy of the form with an original signature of an authorized company official will be accepted.

1) ANY CHANGE TO NCPA IFB/CONTRACT LANGUAGE BY THE DISTRIBUTOR

7.2 BUY AMERICAN POLICY OF THE NCPA FOR BIDDING FROZEN AND SHELF STABLE CANNED FRUIT AND VEGETABLES: All foreign brand product bid by the Distributor **will be tested for quality and meeting bid specification prior to purchase by the Distributor** for delivery to the School District. School Districts may request No Foreign Fruit or Vegetables in the Special Conditions section of the IFB/Contract. However, the Distributor may have to provide weekly pricing on domestic product due to availability of agricultural products.

7.3 BUY AMERICAN PROVISION AND COUNTRY OF ORIGIN: The Distributor shall comply with the “Buy American Provision” for Contracts that involve the purchase of agricultural products. Federal regulations require that all foods purchased for School Nutrition Programs be of domestic origin to the maximum extent practicable. 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/manufactured 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 an awarded vendor must contain over 51% of the product’s food component, by weight or volume, from U.S. origin and be processed in the United States.** 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. This definition of domestic product serves both the needs of schools and American agriculture.

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.
- Competitive Bids reveal the cost of a domestic product is significantly higher than a non-domestic product or; product(s) may qualify under the Richard B. Russell National School Lunch Act’s Buy American provision for purchasing food and food products used in School Nutrition Programs which states that products are acceptable provided over 51% of the final processed product(s) consist of agricultural commodities that are of US origin.

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- 7.3.1 **NCPA POLICY FOR BIDDING NON – DOMESTIC FROZEN AND SHELF STABLE CANNED FRUIT AND VEGETABLES:** To provide Distributors a procedure when product availability is low, or significantly higher in cost than non-domestic, the following guidance is provided: **U.S. grown, and packed fruits and vegetables are preferred.** But, if cost of the U.S. product exceeds a **10% per case increase over the foreign product and the foreign product meets NCPA bid spreadsheet quality specifications**, the foreign product may be bid. The country (countries) of origin (source) must be provided for **Lot 1 Frozen and Shelf Stable Fruits & Vegetables** in the column indicated on the bid spreadsheets. All foreign brand product bid by the Distributor will be tested for quality and meeting bid specifications prior to purchase by the Distributor for delivery to the School District. School Districts may request No Foreign Fruit or Vegetables in Special Conditions Section of the IFB Contract. However, the Distributor may have to provide weekly pricing on domestic product due to availability of agricultural products.
- 7.3.2 All non – domestic product bid is required to meet USDA Food Safety, Recall requirements, and specifications of the bid.
- 7.3.3 The USDA **Buy American Provision** requires the Country, or Countries of Origin, of ALL Non-Domestic food purchased from the Distributor be **approved in advance** by the School District School Nutrition Administrator. Changes to a products Country of Origin, not specified on the bid document, requires notification and written approval, in advance of delivery, of the product to the School District.
- 7.4 **MULTIPLE FLAVORS AND VARIETIES FOR A SINGLE LINE ITEM: ONE PRICE** is required for all flavors or varieties of the item the Distributor will stock. The Distributor and School District must communicate after the award as to flavors and volume to be stocked. **Multiple pricing per line item is not allowed.**
- 7.5 **NON – STOCKS** - The Distributor will insert the letters “NS” (**NON - STOCK**) in the block for the Distributor code to indicate it is a “non-stock” item due to low usage. **School District(s) will review Non-Stock items with the Distributor** to determine items required for their District, quantities intended, and lead order time as needed. This method is applicable for “NS” line items and “NS” flavors within a line item when multiple flavors are available. **The School District is responsible for purchasing non-stock (Special Order) products requested from the Distributor and brought into stock on their behalf.** However, the school district will not be responsible for more than a 60 - day average usage, or the remainder of the minimum shipment, after notification to the Distributor the product will no longer be needed or ordered.
- 7.6 **SPECIAL ORDERS:** If NCPA minimum usage of an awarded bid product, at a distributor house, is not sufficient for “slotting” the requested product, the School District(s) may **Special Order** the product at the required minimum shipment. The School District is responsible for purchasing all inventory of a Special Order made on their behalf. The Distributor may, but is not obligated to, store School District inventory from a Special Order for weekly delivery. **Note: If usage of an awarded bid item falls below the manufacturer minimum order level, the distributor shall notify the NCPA customer and OFFER a suitable substitute, if possible, from NCPA awarded bid line products.**
- 7.7 **QUANTITY REQUESTED PRICING –** The Distributor shall shop the market for the lowest price for the **quantity requested** on the bids received from NCPA school districts in order to reduce manufacturer changes.
- 7.8 **SPREADSHEET PRICING DIRECTIONS:** The **INSTRUCTIONS for completing the NCPA Bid Spreadsheets are provided with the bid.** The instructions provide full direction details, by LOT category, regarding bid line items to be completed for pricing.
- 7.9 **PRICE FOR EACH PRODUCT:** A cost price for one (1) pre-approved brand or, if applicable, one (1) private label is required for each bid specification identified for Distributor pricing in the bid spreadsheets. **If “Private Label” is listed as an approved brand in the bid specification, the Brand Name, Code and Pack Size of the product bid must be written in under the words Private Label.** If a “0” quantity is shown in the Estimated Usage column, the Distributor is still to provide a bid price for the bid specification. All product brands and codes listed on this bid are pre-approved and no products may be added to the bid spreadsheets without prior approval of the NCPA Board of Directors, with appropriate addenda released to eligible Distributors.

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7.10 PRODUCT CODES AND PACK: All efforts are made to provide correct Manufacturer product codes and packs before bids are mailed. All interpretations of the specifications shall be made on the basis of the following statement: If the bidder discovers or suspects error in the item specification, product code number, pack size, or change in manufacturer formulation, the Distributor shall contact Leann Seelman, NCPA Procurement Consultant at leann.seelman@dpi.nc.gov. The NCPA Board of Directors shall make the final determination of product equivalency and advise all potential bid parties through an e-mail Bid Addendum.

7.11 SPICES AND SPECIALTIES TAB and SMALL PURCHASE TAB PRICING – The products listed in the SPICES AND SPECIALTIES TAB and the SMALL PURCHASE TAB are of low usage by School Districts and are priced “at cost” from Distributor’s stock. The Distributor may increase or decrease cost on products in these categories if manufacturer cost changes. Any cost increase or decrease in these categories from the stated bid pricing shall take effect **(7) seven days** after notification to the School District. **Spices, flavorings, and specialty products listed as private label must be bid from Distributor in – stock brands when available.**
NOTE: Spices are exempt from Buy American requirements.

7.12 UNIT PRICE/EXTENSION DISCREPANCY: In the event of a discrepancy between the unit price and extension, the unit price will be considered correct. Errors found in Distributor NEW bid extensions will be corrected and reported to the affected Distributor(s.) All Distributors will be notified of the corrected bottom line by the School District in the Preliminary Award Letter.

8.0 FIRM FIXED FEE BID PROCEDURES FOR LOTS 1 - 4

- 8.1** FIRM FIXED FEE – The Distributor Fixed Fee is charged “per case” and shall encompass the costs of the product’s receipt into storage, distribution, financing, profit, production losses, analyses cost, waste, labor, repackaging, overhead, transportation costs and ALL other costs of doing business for the line items bid in LOTS 1 through 4 and when requested, LOT 1A.
- 8.2** The Fixed-Fee shall remain **firm for the duration** of the Contract, and for the duration of any Summer Nutrition Programs offered by the School Districts and any future Contract renewal period(s). Exceptions: Fuel Increase Force Majeure, Section 27.0 and agreement between School District and Distributor to lower the fixed fee, Section 25.2.1.
- 8.3** The Fixed-Fee will be the **same for ALL items in an individual LOT** for the pack size shown on the bid spreadsheet, EXCEPT for **LOT 4 PRODUCE. PRODUCE CASE SPLITS – Distributors must calculate the cost of case splits by dividing the full case cost by the split quantity requested by the School District. The Lot 4 fixed fee will be added to the calculated cost of the split case.** The Distributor shall indicate the splits they will provide by checking the box provided on the line item of products that may be split.
- 8.4** **FIXED FEE AND PRODUCT SUBSTITUTION:** In the event of a product substitution, the Fixed - Fee charged by the Distributor shall also apply to all other pre-approved brands in that specification and any optional brand priced or offered by the Distributor and approved by the School District for that bid specification.

9.0 DISTRIBUTOR BID AWARD METHOD: LOTS 1 through 4

LOT 1 award method is: **BOTTOM LINE, COST PLUS - FIXED FEE** where award is to the Distributor with the lowest bottom line price from the bidding sheets and as recorded on the **Official Distributor Bid Tabulation Sheet and verified by the School District.**

9.1 FORMULA FOR THE COST PLUS - FIXED FEE METHOD:

- 9.1.1 **UNIT COST** = Actual cost of product to the Distributor from supplier + freight cost to Distributor warehouse.

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9.1.2 **FIXED FEE** = The Distributor Fixed Fee is charged “per case” and shall encompass the costs of the product’s receipt into storage, distribution, financing, profit, production losses, analyses cost, waste, labor, repackaging, overhead, transportation costs and ALL other costs of doing business for the line items bid in LOTS 1 through 4 and when requested, LOT 1A.

9.1.3 **TOTAL BY LINE ITEM** = Unit Cost + Fixed Fee X the Estimated School District Usage per Line Item.

9.2 **LOT 3 SUPPLIES** is required to be a separate **LOT** as it contains “non-food” products which may be taxable. The NCPA provides Distributors a list of Taxable and Non-Taxable supply line items using guidelines from **NC Dept. of Revenue, Sales and Use Tax Bulletin, Section 19. This list is to be used in determination of which items are taxed in NC schools.** The award method for LOT 3 Supplies is: **BOTTOM LINE, COST PLUS – FIXED FEE** where award is to the Distributor with the lowest bottom line price from the bidding sheets and as recorded on the Official Bid Tabulation Sheet and calculations verified and corrected, as needed, by the School District. **This LOT may have a different Fixed Fee.**

9.3 **LOT 4 – PRODUCE** will be awarded as a separate **LOT** to the qualified bidder with the **TOTAL LOWEST BOTTOM LINE PRICE** from the bidding sheets and as recorded on the **Official Distributor Bid Tabulation Sheet** after calculations are verified and corrected, as needed, by the School District. **This LOT may have a different Fixed Fee.**

9.4 **WATER AND OTHER BEVERAGES** may be bid as a part of **LOT 1 with the same Fixed Fee, OR as a separate LOT 6 WATER AND OTHER BEVERAGES Bid to increase competition.** If bidding LOT 6 as a separate LOT, the award method is: **FIRM UNIT PRICE BY LINE-ITEM SPECIFICATION** where award is to the Distributor with the lowest price per serving per line item from the bidding sheets and as recorded on the Official Distributor Bid Tabulation Sheet after calculations are verified and corrected, as needed, by the School District. There is no fixed fee with a firm unit price by line-item bid.

9.5 **LOT 6 PACK SIZE:** The Distributor is to bid the pack size that they stock that is closest to the pack size indicated on the bid sheet. Distributors may change the number of bottles per case to the pack size that will be the best value. For example: Pepsi distributes Gatorade in 24/12 oz. plastic bottles to Bottlers, but Distributor’s purchase this product in 48/12 oz. plastic bottles. **If a Distributor changes the case size, the servings per case must also be changed on the bid pricing sheets.**

9.6 The unit price is to be provided in **CASES**. Formulas will compute pack size variance and cost per serving.

10.0 PRODUCE DISTRIBUTOR REQUIREMENTS

10.1 **AUDIT** - Produce distributor bids are subject to audit prior to award by the NCPA Board of Directors, or at any time, by the local School District, or the NCPA Audit Committee, or designee, to establish that bid pricing provided is consistent and within range of market pricing.

10.2 **GAP CERTIFICATION FOR PRODUCE USED IN SCHOOLS:** Good Agricultural Practices (GAP) for Produce served to students is an important marketing and health issue for the produce industry. Growers providing produce to packers serving School Districts under this IFB/Contract must have a verified and audited GAP program in place to assure produce is free of contamination. **ATTACHMENT F**
USDA AMS GAP information can be found at the following website:
<https://www.ams.usda.gov/services/auditing/gap-ghp>

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- 10.3 PRODUCE ORDERS:** The awarded Distributor will provide, via e-mail, BEFORE NOON each Friday, or other weekday, as agreed with the School District, the weekly produce pricing document for all produce products not under annual contract pricing.
- 10.4 QUALITY OF PRODUCE –** Produce products purchased for the duration of this contract shall match quality specification as provided on LOT 4 Produce bid spreadsheet. Code dated product must show adequate days of shelf life from the day of delivery. **Adequate days are a minimum of seven days from delivery.** The Distributor shall investigate, and correct, School District issues with product quality.
- 10.5 PROCEDURE FOR BIDDING NON-DOMESTIC PRODUCE:** The country (countries) of origin must be provided for Lot 4 Produce on the bid spreadsheets in the space provided. Changes in country of origin during the term of the contract must be provided to and approved by the School District School Nutrition Director.

11.0 DISTRIBUTOR BID AWARD METHOD: PRODUCE

- 11.1 ANNUAL WEEKLY or CONTRACT PRICED PRODUCE SPREADSHEET SECTIONS I, II AND III -** Products listed in the **SECTION I, II AND III Weekly or Contract Priced** section of Lot 4 Produce bid spreadsheet may be bid using annual contract pricing or weekly pricing.

11.1.1 COST DOCUMENTATION REQUIREMENT FOR SECTION I: Use the cost from supplier invoices that correspond to the prices charged to schools from the delivery week of **03/11/2024** to bid the following list of specified products:

90001 Apples, Sweet Sliced, Bag, 2 oz.; 90007 Red Delicious Apples 125-138 ct.; 90002 Bananas, Green Tip 40#; 90003 Carrots, Baby Peeled 4/5#; 90008 Cucumbers 10 lbs.; 90008 Red Grapes 18 lbs.; 90011 Oranges, US#1, 100-113 ct.; 90012 D'Anjou Pears 120 ct.; 90014 Grape Tomatoes 12 pt.

The Distributor must provide the following, with the bid package, for products meeting bid specifications:

- Supplier Invoice for products delivered to schools during the delivery week specified above must include supplier name and contact information, date of invoice and unit price per item;
- Weekly price sheet that corresponds to the prices charged to schools for the specified delivery week;
- Copies of delivery tickets containing Section I products, signed by school District personnel at time of delivery, during the specified delivery week.

Please note, provided **documents** will be compared and discrepancies may result in bid disqualification.

11.1.2 COST DOCUMENTATION FOR SECTIONS II & III WEEKLY OR CONTRACT PRODUCE

SECTION: Distributor will maintain supplier invoices that correspond to the prices charged to schools from the delivery week of **03/11/2024** on site and will be made available on request. Please note that pricing will be compared to actual school district invoices for the week and discrepancies may result in bid disqualification.

11.1.3 PRODUCE SPREADSHEET: SECTION IV ADDITIONAL ITEMS— The school district will list additional items with usage in this section. The Distributor may provide either annual contract pricing or weekly pricing. All pricing will be included in the bid bottom line.

11.1.4 If supplier school bid pricing from the week of 03/11/2024 is not available for the additional item(s) listed in Section IV, distributor must obtain price quotes from a supplier from the week prior to this bid opening – week of May 6-May 10, 2024. This will allow distributor to obtain price quotes on ALL produce listed. Price quotes in this section will be compared to market reports.

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- 12.0 USDA DONATED FOODS STORAGE AND DELIVERY AND/OR FARM-TO-SCHOOL DELIVERY BY DISTRIBUTOR**
- 12.1** The need for **USDA Donated Foods Delivery and Storage** and **Farm to School Delivery** (foods provided by NCDA&CS–Food Distribution Division may be added as a **Special Condition** of the School District. The FEE for storage and delivery are to be inserted on the **New Bid – Tabulation Sheet** attachment page of this contract and is included in the bottom-line bid total.
- 12.2** The **NCDA&CS – Food Distribution Division Contract Covering USDA Donated Foods Storage and Delivery** is an additional attachment to this document if required by the School District. The contract will be provided to the awarded Distributor by the School District for signature and then sent to Director, NCDA&CS Food Distribution for signature. Final copy with signatures is sent to the awarded Distributor and a copy is retained by the School District. The NCDA&CS Food Distribution contract is an ANNUAL CONTRACT and is not subject to renewal. If the School District renews the Distributor contract, a new USDA Donated Foods Storage contract must be signed.
- 12.3 NOI PROCESSED DELIVERY AND STORAGE FEE = Distributor’s Flat Fixed Fee (same as LOT 1) X the Estimated Cases to be delivered. Fee provided is per case delivered.** Members may divert USDA donated foods to Manufacturers awarded NOI products on the Direct to Manufacturer/USDA Donated Foods Processing bid as shown on the Distributor Bid Spreadsheets. Manufacturers will give a per case discount in the amount of the Pass-Through Value (PTV) of the USDA Donated Food. The Distributor agrees to process the discount and charge the member the NOI price for the commercial product. The Storage/Delivery fee is the same as Lot 1 and is charged with the commercial bid. Distributor agrees to enter NOI purchases into approved tracking systems and to provide tracking reports, within 5 working days of written request, to member districts processing NOI.
- 12.3.1 In accordance with 7 CFR 250.30(i), processors providing end products containing USDA Foods to a commercial distributor must enter into a written agreement with each distributor, which includes financial liability, not less than monthly end product sales reporting, title transfer requirements under 7 CFR 250.11, and the applicable value pass through system to ensure that the value of USDA Foods and finished end products are properly credited to the NCPA Member District.
- 12.3.2 Commercial pricing for products that are NOI eligible will follow Commercial Contract Term, August 1 through July 31. The PTV will follow the USDA Donated Food Contract Term, therefore the PTV may change July 1.
- 12.4 USDA DONATED FOODS DELIVERY AND DISTRIBUTOR STORAGE FEE = Distributor’s Flat Fixed Fee plus the Storage Fee X the Estimated Cases.** Storage/Delivery for cases held **181+ Days** may be assessed an additional monthly fee which is shown on the Official Bid Tabulation Sheet, but not added in the bid bottom line. The School District reserves the right to negotiate a lower storage and/or delivery fee for USDA donated foods with the Distributor after the bid award.
- 12.5 FARM TO SCHOOL DELIVERY FEE = Distributor’s Flat Fixed Fee** (may be different than LOT 1 or LOT 3) **X the Estimated Cases** to be stored. Fee shown on the Official Bid Tabulation Sheet is per case delivered and total is computed to the bid bottom line.
- 12.6 USDA DONATED FOODS DELIVERY AND STORAGE CASE ESTIMATES** - The School District provides case estimates on the **USDA Distributor Storage Tab of the bid spreadsheets** and the total calculates on the Bid Recap sheet and carries to the bottom-line bid as shown on the **Official Bid Tabulation Sheet**.
- 12.7 DISTRIBUTORS ACCEPTING USDA DONATED FOODS FOR STORAGE:**
- 12.7.1 Distributors will approve Purchase Orders and provide dates for NCDA truck delivery appointments within 48 hours of request.

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- 12.7.2 NCPA drivers will be allowed to observe off-loading at distributor loading dock, verify over/shorts and sign receiving ticket in presence of the dock receiver.
- 12.7.3 If a NCPA driver is not allowed to verify the shipment at the time of delivery, he shall note such on the delivery ticket and the order will be considered “complete.” The Distributor will be responsible for crediting the School District for any shortage.
- 12.7.4 NCPA trucks shall be off – loaded at the Distributor loading dock in a timely manner. (i.e. not a partial unloading with wait time for completion)
- 12.7.5 School Districts desiring Distributor to provide USDA Storage and Delivery will state such on the Special Conditions page and provide the awarded Distributor a copy of the NCPA & CS Food Distribution Contract Covering Storage of Commodities each year of this agreement. School Districts desiring Distributor to provide Farm to School deliveries must note on Special Conditions Page.
- 12.7.6 Distributor will communicate to the School District pack dates, expiration dates or best if used by date for USDA products received into inventory by the Distributor.
- 12.7.7 Distributor will maintain an inventory system to ensure accountability of USDA products received into inventory by the Distributor. In the event, that USDA inventory maintained for a NCPA member district is lost or otherwise not accounted for by the Distributor, the Distributor will reimburse the District the value of the USDA donated food. If USDA products are lost or not otherwise accounted for and the District must purchase the commercial equivalent of the further processed USDA donated food, the Distributor will not charge the district more than the USDA cost per serving for the substituted commercial product.

13.0 IFB - CONTRACT DEFINITIONS

- 13.1 **ACCURACY OF PRICING:** The accuracy of all unit prices, fixed - fees and statements contained in this bid is the responsibility of the Distributor, and no change or cancellation may be made except as provided in this IFB Contract or it's addenda.
- 13.2 **BILL BACKS:** Per **USDA Regulation 210.21**, all manufacturer cash discounts, label allowances, group allowances and promotions shall go to the benefit of the School District. Any documentation pertaining to such discounts, bill backs or allowances, will be provided with the NCPA product audit request.
- 13.3 **BRAND AND GRADE LABELS:** The Distributor shall provide documentation of **Brand and Grade Labels Identification** indicating first, second and third quality Grade Labels associated with private labels that may be used in this Contract. (Applicable to Distributors bidding LOT 1 and LOT 1A) **(ATTACHMENT A)**
- 13.4 **BUY AMERICAN (BA) CERTIFICATION FOR THE NCPA** Certification of the BA is required to be provided for all Distributor bid food product specifications to meet USDA Buy American requirement with NEW or RENEWAL bid packages, but **no later than June 1 of the contract year**, for products bid that are not a pre-approved brand (private label and other) and any changes to such products to be delivered. Certifies the ingredients in the products were both processed in the U.S. and contain over 51% of its agricultural food component, by weight or volume, from the U.S. **(see IFB section 7.3)**
- 13.5 **CATCH WEIGHT PRICING** (per pound): Selected Turkey and Pork products in LOT 1 are priced per pound. Distributors will provide the Unit Price for the average Pack as provided. The price per pound goes in the BLUE highlighted cell under Pack. This will provide an average case price as well as give the School Nutrition Director the price per pound for catch weight.
- 13.6 **COMBINED PRODUCT USAGE ESTIMATE** is a guide for Manufacturers and Distributors as to the potential product usage of the combined NCPA school districts by Distributor, but under no circumstances guarantees NCPA product usage. Combined usage, including product substitutes is provided to the NCPA Consultant upon request annually and at designated times. Product Usage, by line item and Distributor House is shown on the DRAFT Distributor Bid each year.

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- 13.7 COMMUNICATION:** The awarded Distributor shall communicate continuously via electronic messaging with the School District customer concerning product orders, product movement levels, substitutions, inventory, manufacturer shortages, production issues, etc.
- 13.8 CUSTOMER ISSUES:** The Distributor will provide prompt response to customer issues regarding product quality, product delivery, and product damage, credits or billing transaction documentation. Failure to resolve customer issues in a timely manner may result in contract termination, or future bid disqualification.
- 13.9 DISTRIBUTOR OPTION TO DECLINE:** The Distributor awarded the Contract has the option to decline award of other LOT(S) provided the Distributor submitted a Bid but was not awarded LOT 1. Bidders of Optional LOT(S) 1A, LOT 3, and LOT 4 AND LOT 6 have the option to decline the award if the bidder deems the number of line items awarded insufficient. Any award declined by a Distributor will be awarded to the qualified Distributor with next lowest price. If the first Distributor awarded the Contract chooses to decline the award, **the Distributor is required to provide a written request of relief to the School District within five (5) working days after the Preliminary Bid Award Letter is received from the School District.**
- 13.10 DISTRIBUTOR FACILITIES:** The warehouse facilities and delivery vehicles shall be clean, be free of insects and rodents, and meet all federal and state regulations for storing and delivery of dry, chilled, and frozen food products.
- 13.11 HACCP:** All Distributors submitting bids must provide a current **Hazard Analysis Critical Control Point Summary (HACCP)** describing the Distributors on – site food sanitation and safety practices meeting federal regulation. The awarded bidder must maintain a current HACCP plan through the duration of this contract. **ATTACHMENT B**
- 13.12 INTERFACE WITH MANUFACTURERS:** The Distributor must communicate with Manufacturer regarding district problems relating to product levels and product quality and provide the school district notification of supplier issues, including but not limited to, production, shortages, transportation or product discontinuance. **A Manufacturer Letter describing the circumstances and effective dates is required from the Distributor to the School District with a copy to the NCPA Consultant(s) for documentation of the issue.**
- 13.13 1FS DATA COLLECTION OF SPECIFICATIONS:** The NCPA has partnered with One Food Service Schools (1FS) to utilize their 1FS Schools web-based platform to collect Product Specification data. Manufacturer partners are required to provide current and accurate product specification information, including nutritional analysis, federal meal component equivalent data, Buy American and NCPA Allergen Statement. Manufacturer specification data must be current on the website as it provides documentation data for federal claims for reimbursement of meals served to students. Pricing is obtained for school district members for these items through the annual *Direct to Manufacturing and USDA Donated Food Processing Bid*; however, the Distributor is required to provide all “private label” and “Distributor Bid” product specification sheets by line item to the School District via digital means with **NEW or RENEWAL bid packages, but no later than June 1 of the upcoming contract year.**
- 13.14 MANUFACTURER PRICING COMMITMENT TO THE NCPA:** NCPA member school districts are the largest volume purchaser of foods for Child Nutrition Programs in the state of North Carolina and product bid pricing is expected to reflect that volume. Bid pricing within this Agreement is provided by the manufacturer for exclusive use by the NCPA based on volume purchasing and is not transferable.
- 13.15 MANUFACTURER CONTRACTS OFFERING LOWER PRICES** – If an eligible public agency contract, within the state of NC, or a Distributor volume bracketed pricing contract with an awarded NCPA Distributor, shows a lower price on a product than offered under this Agreement, the manufacturer shall notify the NCPA and MATCH that lower pricing under this Agreement.
- 13.16 MANUFACTURER REBATES AND BILL BACKS** - The regulations at 7 CFR 210.21(t), 220.16(e) and 215.14a(d) require that school food authorities (SCHOOL DISTRICTS) must include in all cost reimbursable contracts, contracts including cost reimbursable provisions and solicitations for such contracts, provisions which limit use of non-profit school foodservice account funds to costs resulting from proper procurements and contracts. Specifically, the regulations require that SCHOOL DISTRICTs may use nonprofit school food service account funds to pay only for allowable costs - those costs net of all applicable discounts, rebates and other applicable credits. The regulations at, 7 CFR 200, Office of Management and Budget Guidance, 7 CFR 210.21(c) (i), 215.14a(c) and 220.16 (c) ensure that School Food Authorities receive the full benefit of any applicable discounts, rebates or credits intended specifically for the School Districts by manufacturers,

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- suppliers and/or redistributors arising from purchases made under this IFB (hereinafter “Applicable Discounts, Rebates or Credits”). Distributor may receive and retain earned income, defined as income and profit earned by the distributor for work or services performed by the distributor and/or consistent with industry standards. Some examples of earned income include but are not limited to, freight management, procurement leverage, consolidated warehousing, quality assurance, performance-based product marketing, and management of competitive conditions. The total bid price is not adjusted for earned income.
- 13.17 MINIMUM SHIPMENTS:** The awarded Distributor must provide bid product brands/codes requested by the School District from the current **NCPA Direct to Manufacturer and USDA Donated Foods Processing Bid**, provided the School District NCPA customer(s) meet(s) manufacturer minimum shipment requirements to the Distributor.
- 13.18 NON – DOMESTIC FOODS:** Any non-domestic product (non - manufactured in the U.S. and containing less than 51% U.S. ingredients) delivered to the School District, without the prior, written approval of the School Nutrition Director, or designee, shall be rejected at the delivery point. However, if an unapproved, non – domestic product is delivered to the School District and not rejected, the Distributor shall be held responsible for any over-claims that may result from failure to meet the School District’s required meal pattern. Note: If not rejected at delivery, the Distributor’s return policy becomes effective for credit. Agricultural products which are grown, canned or packed outside of the United States may be accepted by the school district (in writing) with proof from manufacturer that poor Market conditions exist (weather, and/or supply availability of market); this requirement applies to both pre-approved and “private labels”.
- 13.19 ON – SITE INSPECTIONS:** NCPA member School Districts reserve the right to request of the Distributor documentation, on-site inspections of facilities, delivery vehicles and records at any time during the Contract period.
- 13.20 PRIVATE LABEL PRODUCT SPECIFICATIONS:** Provide the School District **private label** product specification documentation **bid directly by the Distributor** including nutritional analysis, ingredients, allergens and country of origin information with **NEW or RENEWAL bid packages, but no later than June 1 of the upcoming contract year.** This data must be provided in digital format separately for each product. Private label substitutions or changes must be provided to customers in advance. Manufacturer signed Buy American documentation for private label products is required. The manufacturer may provide a letter or use the Buy American Certification provided.
- 13.21 PRODUCT RECALL:** The Distributor awarded the Contract shall be expected to voluntarily comply with all Federal, State and local mandates regarding the **Identification and Recall** of foods from the commercial and consumer marketplace. The Distributor shall have a process in place to immediately respond to a manufacturer food recall; the process must include accurate and timely communications to the School District and NCPA and assurance that unsafe products are identified and removed from school sites in an expedient, effective and efficient manner. The Distributor is responsible for any consequences arising from the failure to make immediate notification. A one- page summary of the **Distributor’s Food Recall Policy/Procedures** is required to be submitted with the Bid in **ATTACHMENT E.**
- 13.22 PROTEST PROCEDURE:** Protests by the Distributor must be submitted in writing, with supporting documentation, to the issuing School District or Co-Op within **five working days** after bid award. Protests should be made to the School District with a copy of the protest letter to be provided to the NCPA Consultant: leann.seelman@dpi.nc.gov
- 13.23 QUALITY CONTROL AND ASSURANCE COMMITTEE (NCPA)** is the contact for product quality issues affecting multiple NCPA member districts. It is the responsibility of the School District and awarded Distributor to collaborate on solving local problematic order, delivery and product issues.
- 13.24 SUB-CONTRACTING:** The awarded Distributor will deliver all item(s) to the School District at the proposed price, in accordance with the item specifications and the General Terms and Conditions Contained in this IFB/Contract. **Sub-contracting of this Contract is not permitted** for any reason without the prior written permission of the School District.
- 13.25 VALUE ADDED OPTIONS AND SERVICES:** Value Added Options and Services including, but not limited to product merchandisers and other purchasing incentives will not be considered as a factor in evaluating the award of this Bid.

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14.0 PRODUCT QUALITY, PRODUCT SPECIFICATIONS AND RECOURSE FOR MISREPRESENTATION

- 14.1** All food products supplied by the Distributor awarded the Contract will comply with Standards of Identity, Quality and Fill as described in 21 CFR Part 100 of the Food, Drug and Cosmetic Act regulations. All canned and frozen fruit and vegetable products delivered are to be from the most recent manufacturer pack date and to meet bid product specification. Perishable products shall be labeled with an expiration date or best if used by date. Products shall be delivered fresh with adequate expiration dates.
- 14.2** Any change to a “Distributor Bid” brand and code product specifications shall be provided to the School District immediately by the Distributor. This includes any product changes at the Mid Term Price Increase/Decrease. In addition: changes to a product specification, due to substitution or other reason, must be available to the school district for prior approval to the Distributor a minimum of 24 hours before delivery.
- 14.3** School Districts have automatic product protection recourse against suppliers for products that are **misrepresented. According to U.S. Federal regulations, the supplier whose name and address appears on the package is the responsible party.** The Distributor awarded this Contract is expected to take immediate action to correct any situation in which product integrity is violated.

15.0 ESTIMATED QUANTITIES AND DISTRICT INFORMATION AFFECTING PURCHASES

- 15.1** Quantities reflected in this IFB are estimates based on the combined projected needs of the School District during the Contract period. These quantities are the best estimate of anticipated needs available at the time of publication of this IFB, but the accuracy of this estimate may be affected by numerous factors including but not limited to, budgetary adjustments, product pricing, availability of Federal funds or other subsidies, changing market forces, or unintentional errors or omissions. Actual needs may be greater or less than the estimated quantities provided.
- 15.2** The School District will share with the Distributor information concerning availability of USDA donated Foods which may impact Distributor ordering levels including: The provision of: School District calendars, School District menus, menu changes, NCDA 209 reports, monthly district USDA Donated Foods inventory, and other timely communication from the School District will assist the Distributor in ordering. If needed information is not provided, the Distributor shall make and document efforts to obtain needed ordering data from the School District. Documentation of issues shall be provided to the NCPA Consultant for technical assistance.

16.0 TIE BID, BID ERRORS, BID REJECTION AND USE OF PIGGYBACK CLAUSE

- 16.1 TIE BID:** In the event of a tie on a Bid LOT or line item, the deadlock will be decided in the following order:
- The largest pack size with the same unit cost per serving.
 - Documented evidence of unresolved service issues with a Distributor.
 - Distributor is certified as Small Business/Minority Business/Women Owned Business.
 - All else being equal, by coin toss by the School District with tie Distributors present.
- 16.2 REJECTION:** The School District reserves the right to reject any, and all Bids, or any parts thereof, and request resubmission of bids from all distributors as deemed in the best interest of the School District.
- 16.3 BID ERROR:** In the event of an error in a product specification or pricing, that item will be **excluded** from the tabulation. Any item excluded from the bid tabulation will be excluded for ALL bidders for evaluation purposes only. Multiple bid errors may be rationale for a Distributor’s bid disqualification.
- 16.4 PIGGYBACK CLAUSE:** The Piggyback Clause is a Legal Provision that may be employed by a local School district in the circumstance of no bids received or all bids received are disqualified. If employed, documented Distributor Agreement, Legal Advertisement of Waiver for Competitive Bidding and Local Board Approval by both Districts is required. Pursuant to **G. S. 143-129 (g)**, when a Local Board of Education (BOE) determines it is in the best interest of the member district over which it has authority, the

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requirement for competitive bidding may be waived for the purchase of food and supplies contained herein, including all subsequent Addenda, to allow the member district to purchase from the bid/contract with any other member district within the NCPA. The member district's BOE, having approved the waiver for competitive bidding, may enter into a new and separate contract with a Distributor who has contracted with another member district provided the member district's BOE is in agreement and the Distributor is willing to extend the same or more favorable prices, General Terms and Conditions to the member district for which competitive bidding has been waived.

17.0 PRELIMINARY DISTRIBUTOR BID AWARD

17.1 LOT Awards are considered "PRELIMINARY" until the following is completed:

17.1.1 The School District reviews the line-by-line prices for accuracy of additions and extensions, brands, and compliance with all instructions to ascertain that the offer is made in accordance with the General Terms and Conditions of the IFB. School officials who find error(s) in calculations will adjust and correct and notify bidders individually. The corrected bottom-line calculations will be shown in the **Preliminary Award letter** sent to all bidders.

17.1.2 The NCPA Audit Committee will provide each School Nutrition Director a **Pre-Award Audit Approval** of selected items that have been audited BEFORE the Bid may be finalized for Local Board of Education approval.

18.0 ADDITIONAL 15 PRODUCTS, OPTIONAL LOTS AND "NS" NON- STOCKS

18.1 Each School District may add up to a TOTAL of 15 Additional Products at Cost - Plus Fixed Fee for ALL LOTS; Inclusive of LOT 1 (Groceries) and LOT 3 (Supplies). **Additional items must have a minimum of 500 cases estimated usage.** In addition, a TOTAL of 15 Additional Products at Cost - Plus Fixed Fee may be added to LOT 4 Produce. These items are exclusive to the School District and are listed in the Additional Item TAB of the bid spreadsheets. The product name and specifications for these items shall be added in a LOT TAB in the Bidding Sheets labeled "**Additional Items**" and numbered 1 – 15 as required. The Additional Products shall be included in the bottom-line bid award. School districts will negotiate with the Distributor to establish minimum shipment requirements for all Additional Products.

18.2 **Districts should provide a list of the Additional Items under 500 cases to the awarded Distributor, after the bid is awarded, to include estimated usage and the time frame that the products will be ordered. Distributor should provide pricing on the weekly price sheets. The District will communicate with the Distributor Representative to coordinate these orders.**

18.3 Under the terms of this agreement, the School District may purchase products that are not specified on the NCPA bid specifications, at Cost - Plus Fixed Fee. The intentions of these purchases are for small quantities of products stocked by the Distributor and used for things such as special mealtime needs, catering, school functions and new menu items for district wide student testing. Minimum order requirements of the manufacturer must be discussed with Distributor if the item is not stocked and would be a "special order." The total value of all additional goods including quantities of listed goods that exceed estimated quantities required under this contract is limited to 20% of the estimated value of the contract at the beginning of the contract year.

19.0 SUBSTITUTION AND DISCONTINUED PRODUCT REQUIREMENTS

19.1 The Distributor awarded the Contract shall order goods from manufacturers in economical quantities and maintain inventories at a level sufficient to prevent out of stock situations while avoiding excessive inventories which may be counter-productive to efficiency. Product substitutions due to out of stock situations should be held to an absolute minimum. Distributor "out of stock" percentage is expected at 3% of invoice orders or less. Excessive substitution due to Distributor order errors may jeopardize future business from the School District or invoke Termination Proceedings.

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- 19.2** Any Distributor substitution that is not pre-approved in writing, by the School Nutrition Director or her/his designee, will be rejected by the School District. The School District will not be responsible to purchase quantity of School District estimated usage affected by Distributor substitution.
- 19.3** To facilitate delivery schedules and provide appropriate substitutions in out-of-stock situations for accommodation of students with food allergies, the awarded distributor **MUST** e-mail or fax the school district, for pre-approval by the School Nutrition Director, current specification sheets with ingredient lists, nutritional analysis and allergens for each proposed substitution a minimum of **24 HOURS IN ADVANCE** of the delivery. The Distributor may substitute pre-approved brands within a specification without supplying product specifications, but **24 HOURS ADVANCE** notification of substitution is still required. The Distributor and/or manufacturer are responsible for any damages to customers due to unidentified allergens from products substituted for brands pre-approved by this Contract.
- 19.4** Any substitution for a bid specification product brought in by the Distributor to alleviate **Distributor out of stock** situations, due to buyer or other distributor error, must be of (1) the same or higher quality as the regular stock, (2) the same or lower portion cost than regular stock and (3) delivered for the same flat fixed-fee per case as the original product, adjusted for pack differences. (for example: the original product was packed 100, the substitute is packed 50. The District should only pay half of the flat fixed fee per case.) The invoiced price for a substituted product is to be adjusted to the **current or lower bid price per serving/unit** to avoid incorrect billing at time of delivery. Substituted products are approved by the School District.
- 19.5** Any substitution for a bid specification brought in by the Distributor to alleviate a **Manufacturer out of stock**, or discontinued production, must be approved in advance by the School District and be of (1) the same or higher quality as the regular stock, (2) the same or similar cost as the regular stock and (3) delivered for the same flat fixed fee as the original product, adjusted for pack differences. (for example: the original product was packed 100, the substitute is packed 50. The District should only pay half of the flat fixed fee per case.) The invoiced price for a substituted product is to be adjusted to the **current or lower bid price per serving/unit** to avoid incorrect billing at time of delivery. Substituted products are approved by the School District.
- 19.6** The fact that a **substitute is being made shall be clearly stated on the invoice** or provided on a separate invoice. If a School District employee signs the invoice for a non-approved product, it may be refused and picked up within seven (7) days by the Distributor. Frozen products are not included in this provision and the School District and Distributor must discuss/agree on the policy regarding non-approved frozen food return in regard to Distributor's HACCP policy.
- 19.7** Any substitution of a Non-Domestic product for a domestic product, originally a part of the IFB must be approved in advance, in writing, by the School Nutrition Director, with the Country of Origin information, prior to the delivery of the product to the School District.
- 19.8** If a substitute product is not approved by the School Nutrition Director, or designee, the School District shall, in good faith and in its sole discretion, purchase a product of equal or greater quality from another source. The Distributor shall be responsible and liable for the difference in the cost between the amount paid for the substituted product and the amount, which would have been paid, had the product been delivered. The Distributor shall have no basis to complain that a substituted product purchased could have been purchased at a lower price and the difference in cost (with documentation) will be subtracted from the amount due the Distributor.
- 19.9** If a pre-approved bid product on the NCPA bid sheet is discontinued by the manufacturer, the Distributor shall immediately notify the NCPA Board of Directors to recommend a replacement product. If the bid specification has other pre-approved brands, the Distributor shall price the remaining pre-approved brands on the bid line and offer the best pricing. If there are no other pre-approved brands or the item is Private Label, the Distributor shall shop the market and offer a product that is of the same quality and cost when possible. It is the decision of the local School District to accept or decline a replacement product. The Distributor must notify the NCPA Coordinator leann.seelman@dpi.nc.gov whenever knowledge of a product being discontinued is known so the appropriate action on NCPA bidding sheets may be taken.

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20.0 DISTRIBUTOR AUDITS: PRE – AWARD, MID TERM COST ADJUSTMENT, NON - SCHEDULED AND AUDIT OVER AND UNDERCHARGES

20.1 PRE - AWARD OF BIDS AUDIT: The Annual Pre – Award of Bids Audit will be conducted on the behalf of the membership by the NCPA Audit Committee for LOTS 1, 3, and 4. The Audit Committee will select products for Audit. This Audit will include a minimum of one product of Non-Domestic Origin. The Audit Committee collects source cost documentation, resolves issues related to the Audit and notifies the Distributor and NCPA members of Audit approval/disapproval and any product cost price changes due to audit findings. Distributors are responsible for making source documents available to the Audit Committee in a timely manner. The extent and method of Audit will be at the discretion of Audit Committee.

20.1.1 All official manufacturer product unit cost documentation used for the Pre – Award and Mid – Term Price Adjustment **MUST include documentation from a representative confirming the product unit cost and be dated no more than 60 calendar days prior to the Bid Award or Mid-Year Price Adjustment due date. The confirmation must reference the pricing as authorized for members of the NCPA.** This confirmation shall be maintained on file with the Distributor for audit purposes and is not required to be submitted with the Distributor’s Bid documents.

20.1.2 After Audit approval by the NCPA Board for the annual new Distributor bid, the NCPA member district will pursue final local approval of the IFB/Contract, sign the **Official Certification Form** (New Bids) or the **Bid Renewal Form** and mail to the Distributor. Issue of a local Purchase Order(s) is the official confirmation of Bid Award.

20.1.3 **PRE- AWARD BID AUDIT CHANGES:** If a price on the Annual Bid Audit cannot be verified with the bid price, the audited cost is provided to the School Districts who will make corrections and re-tabulate the bid award. Should an entire Audit process be disqualified, the School District will move to the second lowest Distributor’s bid for approval status.

20.1.4 **PRE – AWARD BID AUDIT OF OPTIONAL LOTS:** Due to frequent use of local Distributors for LOTS 4, 6 and sometimes LOT 1A, the School Nutrition Director or designee will conduct the Pre-Award Bid Audit. The Audit will be conducted as a means of determining and/or verifying the cost quoted by the Distributor. Written quotes and/or other documentation used to ascertain whether these items reflect the lowest quotation may be requested for review. The extent and method of audit will be at the discretion of the School Nutrition Director or designee.

20.2 MID - TERM ECONOMIC PRICE ADJUSTMENT

20.2.1 Whenever a manufacturer, packer or supplier increases rather than extends the cost of a distributor bid product, the distributor must solicit and document the cost from other approved sources (i.e. Recognized Market Reports, Consumer Price Index-Cost of Food Away from Home) in the same manner as for the initial Bid. The Distributor shall shop the market for “Best Buys” and provide documentation of such efforts on behalf of the NCPA with any Mid-Term price increases. Prior to petitioning the School District for price increases, the distributor must solicit written manufacturer quotations of the NCPA pre-approved brands by the line item, or in the case of private label, solicit lower pricing from additional sources.

20.2.2 **Mid -Term Price Adjustments for LOTS 1- 3 (Food and Supplies) must be requested by the Distributor in writing (e-mail) to the school district a minimum of sixty (60) calendar days in advance of the effective date of February 1 of the Contract year which will be Tuesday, December 3, 2024.** Distributors will provide the School District a list of products with increases or decreases including both the current price and the increase/decrease price as appropriate. **Actual Cost and Fixed Fee (if shown) must be in separate columns.** After the completion of the Mid-Term Audit (see 20.2.3), the School District will provide the Distributor written documentation (e-mail is acceptable) if the Mid Term pricing changes are accepted or declined (by item) prior to February 1.

20.2.3 **MID-TERM AUDIT REQUIREMENT:** The NCPA Consultant, or designee, will provide Distributors with a list of products, from the Price Increase/Decrease List to be audited by January 10 of each year. On behalf of the NCPA Board of Directors, the Consultant will collect the required

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documentation, review and resolve issues and notify Distributors and the School District members of Audit Results, and any audited price changes, by January 10 each year. School Districts are to provide written notification to their Distributor of approval or disapproval of the Mid – Term Price Increase/Decrease changes before February 1 of each year.

CONDITIONS OF THE MID – TERM AUDIT INCLUDE:

- Mid-Term Audits will be conducted with each Distributor, on behalf of the membership by the NCPA Audit Committee, or Designee, for awarded items in LOTS 1 – 3.
- Due to frequent use of local Distributors, the School District School Nutrition Director, or designee, may conduct the Mid-Term Audit of selected awarded items in OPTIONAL LOT 1A when from the awarded Distributor other than the Distributor awarded LOT 1.
- The audit is conducted as a means of determining and verifying product cost changes to the Distributor from the manufacturer.
- The NCPA Audit Committee, or NCPA Consultant, retains the option of acting as “designee” on behalf of the NCPA membership in any Audit review.

20.3 Acceptable documentation presented to the Audit Committee, designee, or the School District to conduct pre-and post-award audits, including, but not limited to the following:

20.3.1 A manufacturer Price Confirmation is acceptable for bid pricing received, but not yet purchased. Pricing documentation confirming the product unit cost must be provided and dated no more than 60 calendar days prior to the bid opening or renewal date and note the pricing as specifically for the NCPA.

20.3.2 Actual manufacturer’s invoices or data generated from Distributor receiving reports, including any freight cost.

20.3.3 Documentation of discounts, rebates, allowances, and other procurement incentives intended for the School District received by the Distributor from the manufacturer and/or supplier.

20.3.4 Evidence of shopping the market for BEST PRICING (including freight) from manufacturers and packers to purchase quality food and supplies from the pre-approved brands listed on the Bid Specification Spreadsheet(s), locking in pricing for the greatest extent of time to avoid price increases.

20.3.5 The Distributor awarded the Contract shall agree to allow NCPA Audit Committee members, audit designee or School Nutrition Directors on site for inspection and review of documents at any time during normal work hours.

20.3.6 The Distributor shall keep all market bulletins, manufacturer quotes, and other information that served as the basis for the cost and the calculation for this Bid on file for audit purposes and such documentation is not required to be submitted with the Distributor’s Bid.

20.4 NON – SCHEDULED AUDITS: All items included in the Bid Specification Spreadsheets are subject to audit at any time after the Distributor contract has been awarded, either by the NCPA Audit Committee, their designee, or a member School District representative. The Distributor shall be given notice of the intent to conduct a Scheduled Audit and receive the documentation at least five workdays in advance. Documentation may be viewed at a time and place agreeable to both the Distributor and the Auditor(s).

20.5 AUDIT: OVER OR UNDERCHARGES (Pre-Bid or Mid-Term) that reveal a Distributor has either overcharged or undercharged the School District will be treated as follows:

Overcharges: Whenever an invoice from a manufacturer reveals the price of a product delivered to the Distributor’s warehouse is less than the quoted cost, a credit will be due on each case delivered at the incorrect price. The credit shall be provided within thirty (30) days of the close of the month in which the audit took place. The credit shall be made in the form of a credit or check made payable to the School District’s School Nutrition Services Department. The price correction shall be made immediately.

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Undercharges: Whenever an invoice from a manufacturer reveals that the price of a product, delivered to the Distributor's warehouse, is actually more than the quoted cost, a debit to the school district's account is NOT permitted. In the event of an unexpected market change that results in the manufacturer not honoring pricing quoted on a product for the costing period, it is the Distributor's responsibility to request a price increase for that product using procedures outlined in the Force Majeure section 33.0 of this IFB. The awarded Distributor must maintain records of documentation regarding prices within this contract, and any and all price changes until they have been audited.

21.0 TRANSMITTAL OF DELIVERY ORDERS

- 21.1** Orders will be submitted to the Distributor awarded the Contract by the School District on a schedule and by a method that is mutually agreeable to both parties. The School District prefers the shortest lead time possible in order to minimize inventory levels at schools. Order requirements not covered in this section should be listed in Special Conditions.
- 21.2** Orders may be transmitted electronically or by fax as mutually agreed upon by the Distributor awarded the Contract and the School District. Printed or electronic order guides shall be furnished by the Distributor for recording and/or transmitting orders. If Internet-based, electronic ordering systems are used, the Distributor will provide training on use of their ordering system to necessary School District personnel. The Distributor must block non-bid items from electronic ordering systems available to the School District.
- 21.3** The Distributor awarded the Contract shall provide a representative to screen orders, discuss orders with the School Nutrition Director, or designee, **on a weekly basis**; the representative shall ensure compliance with scheduled delivery, discuss substitutions and shortages, facilitate approval of substitutions, finalize orders for delivery (including USDA Donated Foods if required), and screen delivered orders for shortages, errors, and pricing mistakes.
- 21.4** Distributors bidding Lot 3 or Lot 4 separate from Lot 1 may require the School District to place minimum orders of \$150.00 per school site, based on the dollar amount at the time the order is placed. Mainline Distributors awarded Lot 1 and or additional lots may require a minimum case count of 25 cases per school site, based on the case count at the time the order is placed.
- 21.41** In the event the School District requests one site delivery that includes orders for more than 1 school in order to meet the minimum delivery requirement, the School District will provide separate Purchase Orders for each school and the Distributor will provide a separate invoice for each school order.
- 21.5** **School District must give a 24-hour notice for an order cancellation not related to weather.**

22.0 BILLING AND PAYMENT REQUIREMENTS

- 22.1** Payment will be due to the Distributor awarded the Contract within thirty (30) days of date of the statement, or more frequently, as designated by the School District in Special Conditions. An NCPA member district reported by a Distributor as repeatedly violating the payment requirement will be reviewed by the Board of Directors and reprimanded. Repeated violations may result in termination of NCPA membership.
- 22.2** The Distributor awarded the Contract shall provide each School District separate invoices and statements for food, supplies, and USDA Donated Foods storage (if required). Each School District will provide separate Purchase Orders for each food, supplies, and USDA Donated Foods storage as required.
- 22.3** Co-Op groups have been formed to streamline processes (one bid document, replacing individual documents) and combination of menu items/quantities for increased volume. Informal Co-Op's within the NCPA are not a separate legal entity. Each School District is only obligated for payment of orders placed and received by that individual district. Billing must be provided separately to each individual district for products purchased. There is no obligation for one district to pay invoices belonging to other member districts. Orders and billing are a direct relationship between the Distributor and the individual School District receiving the products.

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- 22.4** The Distributor awarded the Contract shall issue credit memorandums for returned/picked up items within ten **(10) working days** from the request to do so. Failure to issue credit memorandums in a timely manner shall constitute grounds for withholding payments.
- 22.5** It is understood and agreed that all products ordered directly by member districts either commercial products or USDA donated foods will be shipped to a location designated by the member district at the established contract prices as awarded in this contract and in effect on dates orders are placed. Invoices will be provided by the Distributor within 30 days of the date of purchase. Invoicing at variance with this condition will be subject to correction to the contract price prior to payment being made. Member districts agree to pay invoices within 30 days of receiving a correct invoice. All billing and payment issues must be resolved by September 30 following the last day of the current year contract. Distributor may withhold shipments if member district fails to pay correct invoices on time. Under no circumstances may a Distributor withhold shipment of goods when the failure to pay is the result of the Distributor not providing a correct invoice.
- 22.6** **Taxable items shall be invoiced separately and shall be billed on a separate statement or products shall be** identified as non-taxable. The current year **NCPA SUPPLY ITEM TAXABLE – NON – TAXABLE LIST** must be utilized by the Distributor. This list may be updated as supply items are added/deleted from the list. Out-of-state Distributors shall comply with the tax laws of the State of North Carolina for food and non-food items. Food and certain non-food items purchased under the contract are not subject to state and Federal Taxes according to the following state Statute:
https://ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_105/GS_105-164.13.html
- NC General Statute § 105-164.13.** *Retail sales and use tax. (23) Sales of the following packaging items:*
- a. Wrapping paper, labels, wrapping twine, paper, cloth, plastic bags, cartons, packages and containers, cores, cones or spools, wooden boxes, baskets, coops and barrels, including paper cups, napkins and drinking straws and like articles sold to manufacturers, producers and retailers, when such materials are used for packaging, shipment or delivery of tangible personal property which is sold either at wholesale or retail and when such articles constitute a part of the sale of such tangible personal property and are delivered with it to the customer.(26) Food and prepared food sold within the school building during the regular school day are exempt from sales and use tax.*

23.0 SITE DELIVERIES

- 23.1** Deliveries shall be made to schools on a regular schedule between hours that are mutually agreed upon by the School Nutrition Director and Distributor in a meeting after award of the Contract. Any deviation of the Distributor from the schedule will require notification of the School Nutrition Director or designee.
- 23.2** Only one (1) Distributor delivery per school site per week is anticipated, but the School District reserves the right to require more/less than one delivery per week, as needed and as volume requires. Known need for deliveries of more/less than one per school site per week shall be indicated within **Special Conditions**. School districts will make efforts to work with the Distributor to consider order volumes and reduce frequency of small volume deliveries but are under no obligation to accept less than one delivery per school site per week.
- 23.3** Delivery schedules shall be submitted by the Distributor to the School Nutrition Director for approval a minimum of two (2) weeks prior to the first delivery and remain constant from week to week. To the degree possible, delivery routes should feature dedicated trucks that deliver in sequence to district schools on a predictable timetable. Conflicts with arrival and departure of students may require Distributor changing delivery routes for safety concerns.
- 23.4** The Distributor shall be notified by the School District in advance of holidays, student vacation and teacher workdays so that arrangements can be made for deliveries as approved by the School Nutrition Director. The School District shall provide the Distributor the school calendar. The School District will make efforts to provide advance notification to the Distributor in the event of weather-related closings.

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- 23.5** Each Distributor delivery must be made in a single vehicle which will adequately protect frozen, dry, or chilled products in accordance with manufacturers/packers recommendations. Types of delivery vehicles used may be impacted by school sites and should be acquainted with facilities. All frozen food must be delivered in a completely hard frozen state. Items showing thaw or deterioration in any form at the time of delivery will not be accepted. Any item delivered in other than proper condition will not be accepted.
- 23.6** Distributor drivers must deliver products into pantry, freezer or cooler rooms as designated by the unit manager. Drivers are not required to stow products on shelves, nor remove containers from master cases.
- 23.7** If a product is omitted from an order by the Distributor, or is delivered in unacceptable condition (defrosted frozen product or damaged containers, for example) replacement delivery must be made within 24 hours, longer with District permission, with no minimum shipment requirement to each site.
- 23.8** Distributor drivers and helpers shall request the authorized school cafeteria manager, or the approved designee, to verify the accuracy of quantities of each item, brand and code numbers of each item and condition of merchandise from a delivery ticket. A designated school receiver shall sign each delivery ticket. Variations from the norm i.e., shortages, damages, etc., shall be noted on each ticket by the designated school receiver and initialed by both the truck driver and school receiver. The Distributor shall not be required to issue credits for errors not detected at time of delivery, except for hidden damage or failure to meet specification.
- 23.9** Cartons must be marked with appropriate product identifying information as indicated on the Purchase Order and packaged in containers that are new, appropriately designed for the products, and sturdy enough to protect the products in the loading, transit, unloading, and storage process.

24.0 WAREHOUSING REQUIREMENTS AND USDA DONATED FOODS WAREHOUSING CHANGE CHARGES

- 24.1** The Distributor awarded the Contract is responsible for the proper warehousing of all products prior to delivery to the School District. Products must be held at the proper temperatures and humidified as recommended by packers or manufacturers, so as to maintain the products and packages at optimum levels of quality and condition. The Distributor shall be liable for the safety and appearance of products and packaging materials. Any products or packages received that are out of condition, as per HACCP guidelines, or not hard frozen in the case of frozen products, will be returned for full credit.
- 24.2** **DISTRIBUTOR WAREHOUSE CHANGE – USDA DONATED FOODS STORAGE:** A current Distributor holding stored products (USDA Donated Foods brown box or commercial manufacturer) that must be picked up due to change of Distributor in a new bid year may charge the School District 50% of the case delivery fee in addition to the storage fee for the month the products are picked up. Commodities will be picked up from the storage facility by August 1 of the new contract period.

25.0 OPTION FOR CONTRACT RENEWAL AND PROCEDURES

- 25.1** Unless this Contract is renewed beyond the expiration of the Contract as stated on the Bid Certification and Agreement, this Contract shall terminate July 31 of each contract year. The School District reserves the right to seek agreement of the Distributor to renew the Flat Fixed Fees or the Firm Price (LOT 6 only) of the original bid award for a period not to exceed four (4) additional terms of one (1) year each at the same or lower rate.
- 25.2** **RENEWAL OF FLAT FIXED FEES, FIRM PRICE ITEMS AND SPECIAL CONDITIONS** The School District reserves the right to renew the Distributor Fixed Fee(s) as stated on the original bid Official New Distributor Bid Tabulation Page. Renewal can be requested each year for a period not to exceed four (4) additional (1) year terms, after the original bid year, with mutual agreement of the School District and the Distributor concerning the following:
- 25.2.1 The same, or lower, distributor fixed fees may be renewed for LOTS 1, 3, 4 and if requested, LOT 1A. The school district may negotiate a lower fixed fee with the distributor for a renewal.

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- 25.2.2 The only accepted increase in the delivery of a Fixed-Fee will be based on fuel cost only as described in Section 27.0 of the IFB/Contract.
- 25.2.3 The same or lower firm unit price per unit may be renewed for Lot 6 bid separate from Lot 1.
- 25.2.4 No changes that would substantially change the original IFB/Contract agreement or Special Conditions of that agreement may be extended in a bid renewal year.

26.0 BID RENEWAL PROCEDURES

- 26.1 The verbal Contract Renewal process may be initiated by either the school district or the Distributor in February of each year.
- 26.2 Renewal Documents Required: The Bid Renewal Certification Agreement, Special Conditions Update must be approved by Distributor, if not, district must re-bid. And, if required, the annual NCDA Donated Foods Storage Contract must be completed, signed and returned to the School District by the Distributor no later than the Official Distributor Bid due date.
- 26.3 The original (first year) bid contract documents, addenda and all attachments are to be maintained as the ORIGINAL BID AGREEMENT between the Distributor and the School District.
- 26.4 After renewal approval, the School District will return a signed copy of the **Bid Renewal Certification Agreement and Special Conditions Agreement** to the Distributor.
- 26.5 The School District completed Purchase Order to the Distributor is the final approval of the Renewal Agreement.
- 26.6 School Districts in Renewal status will provide Usage Reports (via the new - year bid spreadsheets) to the awarded Distributor, at the same time as School Districts soliciting NEW bids, to provide Distributors sufficient usage data for product contracts and ordering.
- 26.7 All NCPA members, regardless of either New Bid or Renewal status, will pay the same manufacturer unit price cost for the same item in LOTS 1- 3, less any freight differences.
- 26.8 Renewing School Districts will receive the Manufacturer New Bid Year Cost Pricing for renewed LOTS via e-mail from their Distributors **the day after bid opening**; however, pricing is subject to change if adjustments are made due to the Pre-Bid Audit by the NCPA Audit Committee.

27.0 FIXED – FEE ADJUSTMENT FOR FUEL PRICE INCREASE

- 27.1 The fixed - fee for fuel price increase may be adjusted mid-contract and at bid renewal. No other criteria may be considered in adjusting the fixed - fee. The Distributor may propose an increase in the flat fixed – fee if the following conditions exist: On the first Monday in November, if the price of fuel exceeds thirty (30) percent of the base fuel price, as established on the date of the initial Bid opening according to the Weekly on Highway Diesel Prices for the Lower Atlantic Region issued by the U.S. Energy Information Administration at: https://www.eia.gov/dnav/pet/pet_pri_gnd_dcus_r1z_w.htm
- 27.2 If conditions exceed 30% of the base fuel price, Distributor may submit a written request for a mid-contract adjustment to the fixed - fee; the request must be submitted to the School Nutrition Director of the School District with a copy to, NCPA Coordinator, a minimum of 60 days prior to February 1. The request must include justification and market documentation for the increase based on fuel cost.
- 27.3 To propose an increase in the fixed - fee, the Distributor shall: (1) Determine if the base fuel cost (as reflected at the Bid opening) has increased by thirty (30) percent, and if so, (2) Document the increase in the price per gallon over the initial base fuel cost.
- 27.4 The increase in the fixed - fee shall be based on \$.01 per each \$.20 increase in the cost of fuel per gallon. For example, if the base fee established at bid opening is \$2.30 and fuel prices increased by forty – five (45) percent to \$3.33 per gallon on November 1, the \$.01 may be applied per unit as indicated in the Distributor's original Bid.
- 27.5 The increase in the flat fixed – fee, based on fuel prices, may not exceed \$.06 per unit in a contract period. The increase in the fixed - fee adjustment at mid-Contract will take effect on Feb. 1 of the contract year.
- 27.6 The same conditions for adjusting the fixed - fee shall apply to the Renewal of the Contract. If, on the first Monday in May, the cost of fuel exceeds thirty (30) percent of the base price that was established November 1, the Distributor may propose an increase in the fixed - fee, using the same procedure described in Item

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27.2 of this Section. The adjustment to the fixed - fee shall not exceed \$.06 per unit. If, however, the price of fuel has dropped by thirty (30) percent from the base that was established on November 1, the Distributor shall reduce the fixed - fee accordingly.

28.0 PRODUCT USAGE REPORTS FROM DISTRIBUTOR

- 28.1** The Distributor awarded the Contract shall provide UPON REQUEST electronic product utilization reports to the School Nutrition Director, or designee, within 4 days of the request. These reports shall be submitted for total quantity delivered per line item (including substitutes for a bid line item) in the terms of bid units per school delivery point and/or combined district total. The NCPA Item Number shall be correlated with the Distributor Item number to provide for sorting data.
- 28.2** Payments for the month prior to the due dates for the utilization reports may be withheld at the discretion of School District officials until utilization reports are received.
- 28.3** Contracted Distributors will submit a utilization report to the NCPA Consultant that includes the total quantity delivered to all districts per line item(including substitutes for a bid line item) and all additional items requested by districts in the terms of bid when requested and as scheduled. The NCPA Item Number (first column on the NCPA bid spreadsheet) shall be included on the spreadsheet. There will be three scheduled usage reports due within 10 days following the last shipment date as listed below:
Report 1 is for Lot 1 shipments from August 1-October 31
Report 2 is for Lot 1, 3, 4 & 6 shipments August 1-January 31
Report 3 is for Lot 1, 3, 4 & 6 shipments Aug.1–July 31 with dollar value of each line item and total bid.

29.0 RECORDS RETENTION REQUIREMENTS

- 29.1** By signing this bid, the Distributor understands that the SCHOOL DISTRICT, the U.S. Department of Agriculture, the NC Department of Public Instruction, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to the specific contract, for the purpose of audits, examinations, excerpts, and transcriptions.
- 29.2** Additionally, the Distributor must provide all documents as necessary for the independent auditor to conduct the SCHOOL DISTRICT's single audit. The SCHOOL DISTRICT will contract to have the single audit conducted as a regular, direct expense to the SCHOOL DISTRICT; School Nutrition funds may not be used for this purpose.
- 29.3** The Distributor must retain pertinent records identified by source, type, and category for a minimum of three years after the School District makes final payments. In the event of any unresolved audit findings, the records shall be retained beyond the three (3) year period for as long as required for resolution of the audit issues.

30.0 ASSURANCE OF NON-COLLUSION

- By signing this bid, the Distributor ASSURES that, to the best of his/her knowledge:
- 30.1** Neither the Distributor nor any business entity represented by the Distributor has received compensation for participation in the preparation of the item specifications or the General Terms and Conditions related to this IFB/Contract.
- 30.2** This bid has been arrived at independently and is submitted without collusion with any other, with any competitor or potential competitor, or with any other person or entity to obtain any information or gain any special treatment or favoritism that would in any way limit competition or give an unfair advantage over any other Distributor with respect to this IFB/Contract.
- 30.3** The Distributor has not accepted, offered, conferred or agreed to confer, and will not in the future accept, offer, confer, or agree to confer any benefit or anything of value to any person or entity related to the School District or any of its members in connection with any information or submission related to this bid, any recommendations, decisions, vote or award related to this bid, or the exercise of any influence or discretion concerning the sale, delivery, or performance of any product or served related to this bid.
- 30.4** Neither the Distributor, nor any business entity represented by the bidder, nor anyone acting for such business entity has violated the Federal Antitrust Laws or the antitrust laws of the state of North Carolina with regard to this bid, and this bid has not been knowingly disclosed, and will not be knowingly disclosed to another Distributor, competitor, or potential competitor prior to the opening of bids.
- 30.5** No attempt has been or will be made to induce any other person or entity to submit or to not submit a bid.

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31.0 ASSURANCES REGARDING LEGAL AND ETHICAL MATTERS

- 31.1** By signing this bid, the Distributor assures that: he/she has read and understands all the General Terms and Conditions in this document and agrees to be bound by them, and is authorized to submit bids on behalf of the offering entity, the Distributor has noted any and all relationships that might be conflicts of interest and included such information with his/her bid response, the bid submitted conforms to all item specification, these General Terms and Conditions, and any other instructions, requirements, or schedules outlined or included in this IFB, if this bid is accepted, in whole or in part, the offering entity will furnish any item(s) awarded to them under this IFB to the SCHOOL DISTRICT at the proposed price and in accordance with the item specifications and the General Terms and Conditions contained in this IFB, the offering entity has, or has the ability to obtain, such financial and other resources, including inventories, as may be required to fulfill all the responsibilities associated with this bid.
- 31.2** The offering entity has a high degree of integrity and business ethics, and a satisfactory record of performances, and has not been notified by any local, state or federal agency with competent jurisdiction that its standing in any matters whatsoever would preclude it from participating in this bid, it would in no other way whatsoever be disqualified to propose or receive any award or contract related to this bid, and the Distributor will comply with any reasonable request from the SCHOOL DISTRICT to supply any information sufficient to substantiate the proposing entity's ability to meet minimum standards, concerning Sections 4.0, 5.0 & 6.0 above, the offering entity has identified and disclosed in this written bid any and all known suspected matters that would disqualify it from participating in this bid or receiving any award or contract related to this bid, recognizing that the offer's failure to identify and disclose any such matters constitutes its affirmation that no such matters exist, and that failure to disclose in this bid any such matters which do exist is a material breach of contract which would void the submitted bid or any resulting contracts, and subject the offeror to removal from all procurement lists and possible criminal prosecution the offering entity has obtained, and will continue to maintain during the entire term of this contract, all permits, approvals or licenses necessary for lawful performance of its obligations under this contract, the prices, prompt payment discount terms, delivery terms, distribution allowances, and the quality and/or performance of the products offered in the bid will be competitive with those offered to a similarly situated customers in North Carolina. A similarly situated customer means a customer purchasing a similar or lower volume of products and subject to similar material General Terms and Conditions, including similar service and delivery requirements, contract duration, payment terms, geographical distribution, allowances, business mix and total sales, as analogous to the potential relationship contemplated between distributor and NCPA members."
- 31.3** The offering entity will comply with all laws relating to intellectual property, will not infringe on any third party's intellectual property rights, and will indemnify, defend and hold the SCHOOL DISTRICT and its members harmless against any claims for infringement of any copyrights, patents, or other infringements related to its activities under this contract. The offering entity will maintain, at the offering entity's expense, any insurance necessary to protect the SCHOOL DISTRICT and its members from all claims for bodily injury, death, or property damage that might arise from the performance by the offering entity or the offering entity's employees or its agents or any service required of the offering entity under this contract; however, the existence of such insurance will not relieve the offering entity of full responsibility and liability for damages, injury, death or loss as described or as otherwise provided for by law, neither the SCHOOL DISTRICT nor any of its members shall be liable to the offering entity for any damages (including, but not limited to, loss of profits or loss of business, or any special, consequential, exemplary, or incidental damages) in the event that the SCHOOL DISTRICT declares the offering entity in default, he/she understands that by signing the bid with any false statement is a material breach of the contract which will void the submitted bid or any resulting contract(s), and subject the bidder to removal from all procurement lists, and possible criminal prosecution, Distributor s must comply with the State of North Carolina Conflict of Interest requirement as defined in General Statutes, Chapter 14-234.

32.0 REMEDIES FOR DISTRIBUTOR NON-PERFORMANCE OF CONTRACT, AND TERMINATION OF CONTRACT

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- 32.1** If the Distributor cannot comply with the General Terms and Conditions in fulfilling its Contract as anticipated, they must supply the same products or services contracted from other sources at the contract price. The distributors delay in the above will constitute the distributor's material breach of contract, whereupon the SCHOOL DISTRICT may terminate the distributor's contract for cause as provided by the remainder of this section.
- 32.2** Unless this Contract is extended by mutual agreement of the parties beyond the expiration of the contract time period as stated on the Bid Certification, this Contract shall terminate upon the expiration of the contract term as stated on the Bid Certification.
- 32.3** If any delay or failure of performance is caused by a Force Majeure event as described in the General Terms and Conditions document entitled "Force Majeure," the SCHOOL DISTRICT may, in its sole discretion, terminate this contract in whole or in part, provided such termination follows the remaining requirements of this section.
- 32.4** Except as otherwise provided within the General Terms and Conditions of this document, this Contract may be terminated in whole or in part by either party in the event of substantial failure by the other party to fulfill its obligations under contract through no fault of the terminating party; provided that no such termination may be implemented unless and until the other party is given: 1) at least thirty (30) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and 2) an opportunity for consultation with the terminating party, followed by a reasonable opportunity, of not more than ten (10) working days, to rectify the defects in products or performance, prior to termination. Failure to respond to the written notification of termination to rectify defects within five (5) working days will result in immediate termination of contract.
- 32.5** Notwithstanding anything contained in this section, in the event of documented and persistent breaches of any provisions in this contract by the Distributor, which are not addressed and rectified in a timely manner, the School District reserves the right to enforce the performance of this contract in any manner prescribed by law, including termination of the contract as deemed to be in the best interest of the school district.

Valid causes for termination of this Contract will include, but are not limited to:

- the Distributor's failure to adhere to any of the provisions of the General Terms and Conditions of this IFB,
- the Distributor delivering any product(s) that fail to meet the Item Specifications included in this IFB relating to the awarded product(s),
- the Distributor delivering any substitution(s) of product(s) different than those originally proposed and awarded without the prior written approval of the SCHOOL DISTRICT,
- the Distributor's failure to provide timely, accurate billing and credits to the SCHOOL DISTRICT,
- the Distributor's failure to meet the required delivery schedules as identified in the contract documents, or
- the Distributor's violation of any other provision contained within these General Terms and Conditions or any attachment thereto which provides for contract termination as a remedy. Including, but not limited to, the purchase of other products of like type and quality from other sources in the open market. In the event the School District elects to purchase other products from other sources, the School District will invoice the Distributor for any increased costs to the School District and the Distributor agrees, by submission of a bid response, to promptly pay any such charges invoiced.
- In the event the School District terminates this Contract, in whole or in part, for any reason provided for within the contract, the School District reserves the right to award the canceled Contract, or any portion thereof, to the next lowest or most responsible offeror as it deems such award to be in the best interest of the SCHOOL DISTRICT.
- Any Contract termination, or persistent documentation of breach of contract provisions, resulting from any cause other than a Force Majeure event, will be deemed valid reason for not considering any future bid from the defaulting Distributor. In the performance of this contract, time is of the essence and these General Terms and Conditions are of the essence.

33.0 FORCE MAJEURE PROCEDURES

- 33.1** The party seeking relief due to Force Majeure will be required to promptly notify the NCPA Consultant and the NCPA Board of Directors via leann.seelman@dpi.nc.gov in writing, citing the details of the Force Majeure event, including documentation, and request NCPA Board of Directors approval of the Force Majeure. *Request Force Majeure Form from NCPA Consultant.* If approved, the Distributor will be notified via a signed Force Majeure Request Form which is sent to the School District(s).
- 33.2** The term Force Majeure shall include, but is not limited to, governmental restraints or decrees, provided they affect all companies in the Distributor's industry equally and are not actions taken solely against the Awarded Distributor; acts of God (except natural phenomena, such as rain, wind or flood which are normally

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expected in the locale in which performance is to take place); work stoppages due to labor disputes or strikes; fires; explosions; epidemics; riots; war; rebellion; or sabotage; or supply chain disruption.

- 33.3 The parties to this Contract will be required to use due caution and preventative measures to protect against the effects of Force Majeure, and the burden of proving that Force Majeure has occurred shall rest on the party seeking relief under this section. They will be required to use due diligence to overcome obstacles to performance created by the Force Majeure event and shall resume performance immediately after the obstacles have been removed, provided the Contract has not been terminated in the interim.
- 33.4 Delay or failure of performance, by either party to this contract, caused solely by the Force Majeure event shall be excused for the period of delay caused solely by the Force Majeure event, provided the affected party has promptly notified the other party in writing. Neither party shall have any claim for damages against the other resulting from delays caused solely by Force Majeure.
- 33.5 The SCHOOL DISTRICT will not be responsible for any costs incurred by the Distributor because of the Force Majeure event unless the SCHOOL DISTRICT has requested, in writing, that the Distributor incur such costs in connection with any delay or work stoppage caused by the Force Majeure, and the SCHOOL DISTRICT has agreed in writing to incur such additional costs.
- 33.6 Notwithstanding any other provision of this section, in the event the Distributor's performance of its obligations under this contract is delayed or stopped by a Force Majeure event, the SCHOOL DISTRICT shall have the option to terminate this contract in accordance with the General Terms and Conditions document entitled "Remedies for Non-Performance of Contract, and Contract Termination." Furthermore, this section shall not be interpreted as to limit or otherwise modify any of the SCHOOL DISTRICT's rights as provided elsewhere in this contract.

34.0 WAIVER

No claims or rights arising out of a breach of this Contract can be discharged in whole or part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party.

35.0 RIGHT TO ASSURANCE

Whenever one party to this contract in good faith has reason to question the other party's intent to perform, the questioning party may demand that the other party give a written assurance of his intent to perform. In the event a demand is made and no assurance is given within five (5) working days, the demanding party may treat this failure as an anticipatory repudiation of the contract.

36.0 REGULATORY COMPLIANCE

- 36.1 The Distributor and SCHOOL DISTRICT mutually agree to comply with all applicable standards, orders or requirements issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387) Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 36.2 The Distributor agrees to comply with all mandatory standards and policies relating to energy efficiency as cited in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (P.L 165).
- 36.3 The Distributor shall comply with Executive Order 11246, entitled Equal Employment Opportunity, as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations, 41 CFR Part 60.
- 36.4 The Distributor shall comply with the following civil rights laws as amended: Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title 7 CFR parts 15, 15a, and 15b; the Americans with Disabilities Act; and FNS Instruction 113-6, "Civil Rights Compliance and Enforcement in School Nutrition Programs".
- 36.5 The Distributor shall comply with the "Buy American" provision for Contracts that involve the purchase of food and/or beverages as per 7 CFR Part 250.
- 36.6 The Distributor shall comply with the provisions of the Consumer Product Safety Act.
- 36.7 The Distributor shall provide notification of **HUB Certification. ATTACHMENT G**
- 36.8 The Distributor shall complete and sign the **Certification of Contracts, Grants, Loans, Cooperative Agreements and Lobbying ATTACHMENT H** and shall include this document as part of the Agreement.

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- 36.9** The Distributor shall provide notification of **Debarment, Suspension and Other Responsibility Matters – Primary Covered Transactions ATTACHMENT I**
- 36.10** The Distributor shall abide by all APPLICABLE State and Federal laws and policies of the State Board of Education when providing services under this Contract.
- 36.11** The Distributor shall comply with the provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).
- 36.12** The Distributor shall comply with the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).
- 36.13** The Distributor shall comply with the provisions of the Davis-Byrd Act, as amended (40 U.S.C.3141-3148).
- 36.14** The Distributor shall comply with the provisions of the Rights to Inventions Made Under A Contract or Agreement. <https://www.law.cornell.edu/cfr/text/37/part-401> go to this link for scope and definitions

ATTACHMENT J – No Bid Response