CJLP GROUP

CLAY COUNTY - JACKSON COUNTY - LAUREL COUNTY
PULASKI COUNTY PUBLIC SCHOOLS
SCHOOL & COMMUNITY NUTRITION

REQUEST FOR PROPOSAL

REFERENCE:	CJLP-FOOD & KITCHEN SUPPLIES-24-25
CONTRACT PERIOD:	JULY 1, 2024- JUNE 30, 2025
POSTING DATE:	MARCH 29, 2024
CLOSING DATE:	APRIL 29, 2024 @ 2:00 P.M.
OPENING DATE: CLAY CO. BOARD OF EDUCATION	APRIL 30, 2024 @ 9:30 A.M.
AWARD DATE:	*SEE NOTE

STANDARD TERMS AND CONDITIONS

1. BID PURPOSE: Clay, Jackson, Laurel, and Pulaski County Schools, Child Nutrition Services (CJLP) is accepting proposals for a one year prime vendor agreement. This one year agreement is for the 2024-2025 school year. Options to renew may be considered. CJLP intends to enter into an agreement whereby CJLP Group agrees to purchase a minimum of 80% of food and kitchen supply items from one primary vendor. The following products are excluded from the Prime Vendor Commitment: Milk, Frozen Novelties, Fresh Produce, Fresh Bakery Items, specialty items not stocked by Distributor. The quantities listed are anticipated usage and must not be construed as exact quantities.
2. INSTRUCTIONS FOR RESPONDENTS: Competitive proposals are requested on the following food and kitchen supply items for delivery to the Clay County Public Schools, Jackson County Public Schools, Laurel County Public Schools, and Pulaski County Public Schools subject to the conditions of this invitation and the special conditions of bidding. Bid tabulations will be made and recommendations will be presented to the respective Boards of Education by their Food Service Directors. *Bids/Proposals will be awarded at the respective Board meetings. Contract award announcements will be sent by electronic mail. The CJLP Group reserves the right to reject any and all proposals.
3. PROPOSAL RETURN INSTRUCTIONS: Refer to Attachment A of this RFP, "Checklist of Requirements for Proposals" for a list of required parts of a proposal. Proposals must be received by the specified closing date and time shown above. Late submissions will not be considered for award. Time is local time at the Board of Education. Submit four (4) copies of the completed proposal in a sealed envelope, with the designated reference number to the following:

   Clay County Board of Education
   ATTN: Melinda Nicholson, Food Service Coordinator
   128 Richmond Road
   Manchester, KY 40962

Faxed submissions will not be accepted. Proposals must be submitted on the original form. The respondent acknowledges they have read this invitation, understand, and agree to bind by its terms and conditions. Proposals must be signed by an officer or member of the firm who is authorized to legally bind the firm. If you do not wish to respond, return the bid form marked NO BID, otherwise the firms name will be removed from the official mailing roster.

4. CLARIFICATION: An electronic copy of the proposal document is available on the school districts websites: www.clay.kyschools.us ; www.jackson.kyschools.us ; www.pulaski.net. For clarification and additional information relative to this proposal contact:
   Clay County Board of Education - Melinda Nicholson 606 598-2168
   Melinda.Nicholson@clay.kyschools.us

5. PROCUREMENT CONSIDERATIONS: CJLP Group conducts all procurement transactions in full compliance with all applicable federal and state statutes, regulations and rules. It is the Group's intention to provide open and free competition. Positive efforts shall be made toward procuring small business and minority-owned businesses. A contract will be entered into by CJLP Group with only responsible bidders who possess the potential ability to perform successfully under the terms and conditions. Consideration shall be made for such matters as a bidder's integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. The CJLP Group shall follow the principles of cost analysis in the review and evaluation of responses to determine if the bidder meets the requirements of reasonableness, allocability, and allowability.

6. AUTHENTICATION OF BID AND STATEMENT OF NON-COLLUSION AND NON-CONFLICT OF INTEREST AND COMPLIANCE WITH THE KENTUCKY MODEL PROCUREMENT CODE: By my signature on the bid certification, I hereby swear or affirm under penalty of false swearing as provided by KRS 523.040:

   a. I am the bidder (if bidder is an individual), a partner in the bidder (if the bidder is a partnership), or an officer or employee of the bidding corporation having authority on its behalf (if the bidder is a corporation).
   b. The costs quoted in the bid response are correct and have been arrived at by the bidder independently and have been submitted without collusion and without agreement, understanding, or planned common course of action, with any vendor of materials, equipment, or services described in this request for proposals, designed to limit independent bidding or competition.
   c. The contents of the proposal have not been communicated by the bidder, or its employees, or agents to any person not an employee or agent of the bidder or its surety on any bond furnished with the bids and will not be communicated to any such person prior to the official opening of the bid or bids.
   d. Bidder certifies that this proposal is made without prior understanding, agreement, or connection with any corporation, firm or person submitting a proposal for the same materials, supplies, or equipment, and is in all respects fair and without collusion or fraud.
   e. The bidder certifies that collusive bidding is a violation of federal law and can result in fines, prison sentences and civil damage awards.
   f. The CJLP Group collective bidding process is conducted consistent with KRS Chapter 45A:345 through 45A:460, the Model Procurement Code and that the contents of the bid response and the actions taken by the bidder in preparing and submitting the bid response are in compliance with above sections of the Model Procurement Code.

g. The bidder is legally entitled to enter into contracts with agencies and is not in violation of any prohibited conflict of interest, gratuities and kickbacks including those prohibited by the provisions of the Model Procurement Code (KRS Chapter 45A). Any employee or official of the CJLP Group, who shall take, receive, or offer to take or receive, either directly or indirectly, any rebate, percentage of contract, money, or things of value as an inducement or intended inducement, or in the procurement of business, or the giving of business, for or to or from, any person, or in open market seeking to make sales to the membership shall be deemed guilty of a felony and upon conviction such person or persons shall be subject to punishment or fine in accord with state and/or federal laws.

7. BYRD ANTI-LOBBYING AMENDMENT: Contractors that apply or bid for an award exceeding $100,000 must file the required anti-lobbying certification. Each tier must certify to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Customer. As applicable, Contractor agrees to file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 USC 1352). Contractor certifies that it is currently in compliance with all applicable provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C.1352) and will continue to be in compliance throughout the term of the Contract and further certifies that:

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

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

Contractor shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative Master Agreements) and that all subcontractors shall certify and disclose accordingly.

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

8. CERTIFICATION CONCERNING DEBARMENT AND SUSPENSION: The Contractor understands that a contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM) or the Excluded Parties List System (EPLS), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p.189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension."

   By signing and submitting its bid or proposal, the bidder or proposer certifies as follows: The certification in this clause is a material representation of fact relied upon by CJLP Group. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to CJLP Group, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 2 CFR 180.220 while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

9. ERROR IN PROPOSAL: No proposal may be altered, or amended after the specified time and date set for the opening. The CJLP Group reserves the right to waive defects and informalities in proposals, to reject any or all proposals, or to accept any proposal as may be deemed to its interest.

10. WITHDRAWAL OF PROPOSAL: All proposals shall be valid for a period of forty-five (45) days from the opening date to allow for tabulation, study, and consideration by the CJLP Group or its designee. The bidder may withdraw a proposal, without prejudice, prior to the published opening date.

11. ADDENDA: The CJLP Group may issue addenda to the proposal after its release.

12. REVIEW: After the public opening of proposals received from this solicitation, The CJLP Group will review the results, develop a preliminary tabulation, and may contact the respondents for the purpose of clarification. If upon completion of evaluation of proposals additional information is necessary to make a final decision, the Group may ask the top evaluated respondents to submit a best and final offer. Group may only request one best and final offer. The opportunity to request a best and final offer shall be at the discretion of the Group. The request will be made in writing and include the areas to be addressed. Group shall negotiate with the responsible Distributor which submits the most responsive proposal. Contract award is contingent upon Group and Distributor reaching mutually agreeable terms. Other Distributors that have submitted proposals will be notified when negotiations have been completed by electronic mail.

13. PRE-QUALIFICATION: The CJLP Group reserves the right to pre-qualify any bidder, especially those which has not previously participated in the CJLP Group bid program. Criteria for qualification shall include:

    a. Product Line: The bidder shall provide proof that all items listed are in stock or can be quickly obtained.

    b. Physical Facilities - Bidder must have the warehouse facilities required to safely and securely store the products required by these specifications. All food service distributors must maintain refrigeration facilities used for storing chilled and frozen products that meet recommendations of the Refrigeration Research Council. Delivery temperatures of frozen and chilled food shall be in compliance with AFDOS code as recommended by the Federal

Food and Drug Administration. The CJLP Group reserves the right to prequalify any or all bidders and to reject any bidder not meeting the requirements in the areas of warehouse facilities and equipment associated with and necessary for the safe and sanitary storage and delivery of food items requested in these specifications. The facilities and operating practices must, at all times, be in compliance with the United States Food, Drug, and Cosmetic Act as well as any State and Local Statute, Regulation or Ordinance.

c. Financial Capacity - The potential bidder shall have financing adequate to purchase items in the most economical quantities. References may be requested to document adequate financial capacity.

d. Service Level - If the CJLP Group does not have adequate historical data to determine the bidder's ability to comply with the service level requirement outlined in this bid invitation, then three letters of reference from previous school district customers shall be provided.

e. Past Performance – The bidder must demonstrate an acceptable level of past performance under previously awarded contracts including conformance to contract requirements, industry standards of performance, reasonable and cooperative behavior, commitment to customer satisfaction, and record of integrity and business ethics.

14. NON-ASSIGNABILITY OF AWARD: The awarded bidder cannot convey this contract to its successors or assigns without the prior, express approval of the CJLP Group.

15. TRANSMITTAL OF ORDERS: The CJLP Group shall issue formal purchase orders in ordering from the awarded bidder. The successful bidder may use salespeople for in-person and/or telephone solicitation of orders in accordance with a mutually arrived schedule developed between the CJLP Group and the awarded bidder. The bidder shall accept orders electronically from the CJLP Group school cafeterias.

16. QUANTITIES: It shall be understood that the bid contract will not obligate the CJLP Group to purchase from the contract.

17. WARRANTY: The awarded bidder shall make available and honor all manufacturer's warranties, standard and extended, to the CJLP Group.

18. RECALLS: The awarded bidder shall notify the CJLP Group immediately of any product recalls. The awarded bidder will issue a credit or comparable substitute for any delivered, recalled product at the CJLP Group's discretion. All costs associated with voluntary and involuntary product recalls shall be borne by the awarded bidder.

19. RETURNS: The successful bidder must provide a Return Material Authorization within 1 working day of the request by the CJLP Group. Bidder must restock returned materials at no charge (special order and custom crafted items excluded).

20. LIABILITY: The awarded bidder agrees to protect, defend, and save harmless the CJLP Group from any suits or demands for payment that may be brought against it for the use of any patented material, process, article, or device that may enter into the manufacture, construction, or form a part of the work covered by either order or contract; and awarded bidder further agrees to indemnify and save harmless the CJLP Group from suits or actions of every nature and description brought against it for, or on account of any injuries or damages received or sustained by any party or parties by, or for any of the acts of the bidders, his servants or agents. The awarded bidder will hold the CJLP Group

harmless for any and all damages resulting from consumption of products delivered under this contract when such damages are attributed to foreign materials or other defects in products delivered by the awarded bidder.

The successful bidder will maintain public liability insurance on all vehicles used in deliveries and will be responsible for all damage done while these vehicles are on school property.

21. ACCOUNTING PRACTICES: During the life of any contract awarded as a result of this bid, the successful bidder must clearly demonstrate the capacity to provide accurate, reliable, and timely reports in terms of invoices, statements, credits, and usage data. Further, they must demonstrate the ability and capability to provide any and all data necessary to accomplish an accurate and time efficient audit of cost on items being purchased under the cost process.

22. ITEM SUBSTITUTION AND OUT-OF-STOCK BACK-ORDERS: Substitutions require prior written authorization from the CJLP Group. The bidder is required to notify the CJLP Group if an item is out of stock, backordered, or if timely delivery is not feasible. Upon notification, the bidder must receive written directions from the food service director on how to proceed (i.e. cancel, process, etc.).

    It is an expectation that all individual items bid are to be stocked items slotted at all distribution facilities servicing the CJLP Group. If an awarded bidder is temporarily out of stock of a particular item, an equal or superior product at an equal or lower price to the original item portion price shall be provided. Awarded bidder shall maintain a 97% average weekly fill rate for all bid items.

    If the awarded bidder fails to deliver within the time specified, or within a reasonable time as interpreted by each School Nutrition Director, or fails to make replacements of rejected articles when so requested, or demonstrates a continuous inability to secure the bid item, the CJLP Group, at its sole discretion, may purchase a product of equal or greater quality from another source. On all such purchases, the awarded bidder shall be responsible and liable for the difference in cost between the amount paid for the substituted product and the amount which would have been paid the awarded bidder. The awarded bidder's argument that an item could have been purchased at a lower price shall not have merit.

    THE CJLP GROUP RESERVES THE RIGHT TO ASSESS THE AWARDED BIDDER IIN THE AMOUNT OF UP TO $1,000 PER INSTANCE FOR FAILURE TO MAINTAIN THE AVERAGE FILL RATE OR FOR FAILURE TO STOCK/SLOT ITEMS ON A CONTINUOUS BASIS WHICH RESULTS IN SPECIAL ORDERS OR SUBSTITUTIONS.

23. PENALTY: The bidder agrees to provide total requirements as listed herein, thereby minimizing occurrences when the CJLP Group may have to seek other interim product sources. The bidder is to deliver 100% of stock items within 10 business days; repeated failure to do so will result in default.

24. PRODUCT AND SAFETY INFORMATION: The successful bidder shall provide upon request, the most recent MSDS information sheets for any products the bidder may deliver. It is the bidder's responsibility to comply with all local, state, and federal regulations. Awarded bidder HACCP procedures are to be provided to the CJLP Group upon request.

25. VELOCITY REPORTS: Velocity reports in an electronic format (Microsoft Excel or Word) specified by the CJLP Group shall be issued upon request. The awarded bidder shall compile velocity reports by school district or any combination. The reports shall indicate purchasing entity,

awarded bidder's item number, manufacturer item number, item description, and quantity sold, and dollar value of each item sold.

26. CONTRACT SUSPENSION: The CJLP Group may, at its sole discretion, suspend the awarded contract for a period of up to 90 days to investigate alleged instances of material breach of contract or material non-compliance. Breach of contract, default, or noncompliance renders the awarded contract null and void. The awarded bidder agrees that they have no legal recourse of any nature against the CJLP Group except for services that are due for prior purchases under the awarded contract. The decision of the CJLP Group regarding suspension and/or termination is final.

27. TERMINATION FOR CAUSE OR CONVENIENCE:
Termination for Cause: The SFA may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the SFA, upon request, with adequate assurances of future performance. The SFA shall provide the Contractor with a written notice thirty (30) days prior to the contract termination date. In the event of termination for cause, the SFA shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the SFA for any and all rights and remedies provided by law. If it is determined that the SFA improperly terminated this contract for default, such termination shall be deemed a termination for convenience. The Contractor may also terminate this contract under the same set of aforementioned conditions.

Termination for Convenience: The SFA may terminate this contract for any reason, provided that the SFA shall be required to provide the Contractor with a prior sixty (60) days' written notice of the effective date of such termination. The written notice shall include language stating this is a Termination for Convenience and include the effective termination date. The Contractor may also terminate this contract under the same set of aforementioned conditions.

28. DEMAND FOR ASSURANCES: In the event the CJLP Group has reason to believe Contractor will be unable to perform under the Contract, it may make a demand for reasonable assurances that Contractor will be able to timely perform all obligations under the Contract. If Contractor is unable to provide such adequate assurances, then such failure shall be an event of default and grounds for termination of the Contract.
29. NOTIFICATION: CJLP Group will provide ten (10) calendar days written notice of default. Unless arrangements are made to correct the non-performance issues to the CJLP Group's satisfaction within ten (10) calendar days, CJLP Group may terminate the contract by giving forty-five (45) day notice, by registered or certified mail, of its intent to cancel this contract.

30. ATTORNEY'S FEES: In the event that either party deems it necessary to take legal action to enforce any provision of the contract, and in the event the CJLP Group prevails, the Contractor agrees to pay all expenses of such action, including attorney's fees and costs at all stages of litigation.

31. COMPENSABLE DAMAGES FOR BREACH: The Contractor agrees that the following items shall be included as compensable damages for any breach of a contract with the CJLP Group.

    a. Replacement costs
    b. Cost of repeating the competitive bidding procedure
    c. Expenses incurred as the result of delay in obtaining replacements

The enumeration of compensable damage contained in this section is not intended to be exclusive and will not operate to bar recovery by the CJLP Group for any other damages occasioned by the Contractor's breach of a contract. However, in cases where contract provides for liquidated damages, said liquidated damages shall be in lieu of all other damages, including those enumerated.

32. OTHER CONDITIONS:

a. The awarded bidder shall be in compliance and will comply with any and all local, state, and federal laws and regulations related to the awarded contract and the rendering of goods and/or services.

b. The awarded contract shall be governed in all respects as to validity, construction, capacity, performance, or otherwise by the laws of the Commonwealth of Kentucky.

c. Any suit, action or other proceeding regarding the execution, validity, interpretation, construction, or performance of this agreement brought against the CJLP Group shall be filed in the local jurisdiction of the CJLP Group.

d. The bidder assures the CJLP Group they are conforming and will continue to conform to the provisions of the Civil Rights Act of 1964 as amended.

e. Kentucky Sales and Use Tax Certificate of Exemption Form will be issued upon request. Federal Excise or Kentucky Sales or Use taxes are not applicable to any purchase made by the CJLP Group. Bids should not include any such taxes.

f. The awarded bidder shall provide access to the CJLP Group, the Comptroller General of the United States, the United States Department of Agriculture, the Kentucky Department of Education, the Kentucky Auditor of Public Accounts or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions (7 CFR § 3016.36). Such access shall be used to ensure compliance with all applicable Federal and state statutes, regulations and rules, including but not limited to cost principles set forth in 2 CFR § 225. All records should be retained for 3 years or if an audit is in progress, until it is closed.

g. The awarded bidder shall retain all required records for three years after the CJLP Group make final payments and all other pending matters are closed (7 CFR § 3016.36).

h. **USDA Nondiscrimination 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 the USDA Program Discrimination Complaint Online Form (AD-3027) found online at How to file a

Complaint, 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:

Submit your completed form or letter to USDA by:

(1) mail: U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410;

(2) fax: (833) 256-1665 or (202) 690-7442; or

(3) email: program.intake@usda.gov.

This institution is an equal opportunity provider.

i. The Clean Air Act And The Federal Water Pollutions Control Act

1. Clean Air Act

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The contractor agrees to report each violation to the CJLP Group and understands and agrees that the CJLP Group will, in turn, report each violation as required to assure notification to the appropriate Environmental Protection Agency Regional Office, and the Federal awarding agency, or USDA.

(3) The contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal assistance provided by Federal funds.

2. Federal Water Pollution Control Act

(1) The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The contractor agrees to report each violation to the CJLP Group and understands and agrees that the CJLP Group will, in turn, report each violation as required to assure notification to the appropriate Environmental Protection Agency Regional Office, and the Federal awarding agency, or USDA.

(3) The contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with Federal funds.

j. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items pursuant to 2 C.F.R § 200.323 unless the product cannot be acquired:

1. Competitively within a timeframe providing for compliance with the contract performance schedule;

2. Meeting contract performance requirements; or
3. At a reasonable price.

Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site: https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

k. The bidder is and shall remain in compliance with all mandatory standards and policies relating to energy efficiency contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163, 89 Stat. 871).

l. The bidder is legally entitled to enter into contracts with agencies of the Commonwealth of Kentucky and is not in violation of any prohibited conflict of interest, including those prohibited by provisions of KRS 164.390, KRS 61.092-61.096, KRS 42.990, KRS 45A.335-490.

m. The CJLP Group reserves the right to reject any and/or all bids and to waive informalities. A contract, based on this sealed bid, may or may not be awarded.

n. Cost Reimbursable Contracts

1. Allowable costs will be paid from the nonprofit school food service account to the contractor net of all discounts, rebates and other applicable credits accruing to or received by the contractor or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to the school food authority;
2. The contractor must separately identify for each cost submitted for payment to the school food authority the amount of that cost that is allowable (can be paid from the nonprofit school food service account) and the amount that is unallowable (cannot be paid from the nonprofit school food service account); or
3. The contractor must exclude all unallowable costs from its billing documents and certify that only allowable costs are submitted for payment and records have been established that maintain the visibility of unallowable costs, including directly associated costs in a manner suitable for contract cost determination and verification;
4. The contractor's determination of its allowable costs must be made in compliance with the applicable Departmental and Program regulations and Office of Management and Budget cost circulars;
5. The contractor must identify the amount of each discount, rebate and other applicable credit on bills and invoices presented to the school food authority for payment and individually identify the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit. If approved by the State agency, the school food authority may permit the contractor to report this information on a less frequent basis than monthly, but no less frequently than annually;
6. The contractor must identify the method by which it will report discounts, rebates and other applicable credits allocable to the contract that are not reported prior to conclusion of the contract; and

7. The contractor must maintain documentation of costs and discounts, rebates and other applicable credits, and must furnish such documentation upon request to the school food authority, the State agency, or the Department.

BID SPECIFIC TERMS AND CONDITIONS

1. SERVICE AREA: Bidders will service Clay County Public Schools, Jackson County Public Schools, Laurel County Public Schools and Pulaski County Public Schools.

2. AWARD: After a review of the responses, a contract may be awarded based on the criteria below. In the case of identical proposals, CJLP Group reserves the right to select and to award the contract on the basis of its reasonable determination of which response is likely to be most beneficial to its group. Responses will be evaluated based on the points awarded to each bidder utilizing the following scale:

	Points
a. Total Price	45
b. Fixed Fee Per Case (Produce Items)	35
c. Online Ordering Procedures/Edits allowed	30
d. Delivery Procedures/School Closures/Cancellations	30
e. Account Representative Services	10
Total Points	150

3. QUANTITIES: All items and quantities listed are based on past usage for current items or estimated usage for new items. It is to be understood these numbers are estimates and the CJLP Group is not obligated to purchase all items from the contract or the quantity estimated.

4. ACCEPTABLE OR EQUAL: Bidders may propose an alternate but equal item that meets the bid criteria for any item on the list. For all such items the bidder would list the price as alternate and insert the alternate item on the last page of the bid.

5. PRIVATE LABEL: The bidder may propose a national brand or private label product that conforms to the item description and other bid requirements.

6. PRIME VENDOR COMMITMENT: The CJLP Group agrees to purchase 80% of all primary items on the bid exclusively from the awarded bidder with the exception of items listed on page 1.

7. DIRECT TO MANUFACTURER: The CJLP Group reserves the right to bid direct to manufacturer in order to secure additional incentives and competitive pricing based on the needs of the group. The awarded bidder agrees to offer assistance to the CJLP Group in any such endeavor including but not limited to providing manufacturer contact information.

8. CONTRACT PERIOD: The initial contract period of any contract awarded as a result of this proposal is July 1, 2024 of contract award to June 30, 2025. The contract may be extended on an annual basis by the CJLP Group not to exceed five years in total including the first contract period. If the CJLP Group notifies awarded bidder of intent to extend the contract by one year, awarded bidder shall respond in writing that it either does or does not intend to extend the contract. If the awarded bidder intends to extend the contract, bidder shall have the option of presenting to the CJLP Group necessary price changes for non-food items (not to increase more than 5% of the original bid price for any item) with documentation. The Price changes can only reflect the actual

case price change to the distributor from the manufacturer. Food items may be adjusted based on the Price Adjustment criteria listed on page 12. The fresh produce fixed fee cost per unit established with the initial proposal may not change during the first year of the contract. If presented with an option to extend the contract, the Group or Distributor may request a change to the fixed fee cost per unit with supporting documentation. It will be the decision of the CJLP Group and their respective Boards of Education after due consideration as to whether or not to accept the contract extension with the price changes or to decline the extension and solicit new proposals/bids. The determination to renew the contract beyond the initial year shall be determined in part by the performance of the awarded bidder during the contract period.

Any contract extension is contingent upon written agreement of the CJLP Group and the awarded bidder. A contract will not be extended beyond any current year unless expressly approved by the CJLP Group. The CJLP Group reserves the right on any contract extension to revise, update, or supplement the contract. The CJLP Group reserves the right to extend the term for up to 180 days to continue a source of supply until new or replacement contracts are completed.

9. PRICING:
    1. All bid prices must include transportation and delivery charges to the location specified during ordering (with the exclusion of fresh produce). Fuel surcharges and other similar charges are not permitted.
    2. The awarded bidder shall provide each item on this proposal to the CJLP Group schools at the same price. The awarded bidder MAY NOT submit multiple discount levels for the same product.
    3. Bid prices must be stated in units of quantity as specified on the bid form.
    4. Items ***must*** be priced according to the pack size listed on the Item Specification List.
    5. Fresh Produce pricing will consist of True Cost plus a fixed delivery fee per case. True cost includes the actual invoice cost paid by the contractor less any promotional allowances and bill backs, but does not include any cash discount for prompt payment. The fixed fee shall be bid in dollars per case (percentage fees will not be accepted). The fixed fee per case must include all costs necessary for storage, handling, and delivery. No additional costs will be paid. True cost for produce must be provided to the CJLP Group by Friday of each week for the upcoming week orders. It is acceptable to provide these prices in weekly updates to the online order guide. This fee shall remain fixed for the initial year of the contract period. CJLP Group reserves the right to audit contractor's invoices to verify true cost.

10. PRICE ADJUSTMENTS: All bid pricing shall remain effective for the duration of the awarded contract. Pricing for non-food items shall be fixed for the contract period. Price adjustments for food items (excluding produce) may be allowed based on documented changes in the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average. Price adjustments will be evaluated on an item-by-item basis. Cumulative contract value change will not be considered. Upward price adjustments will only be considered at the written request of the awarded vendor. The awarded vendor must submit a written request thirty (30) days prior to the period for any price adjustment. The request shall include the specific item(s) along with a current usage report, reason for request and change amount. Price adjustment requests will be evaluated based on the most current CPI-U available at the time of the request. The following CPI-U Database will be used for the contract period:
    - Consumer Price Index for All Urban Consumers (CPI-U); Not Seasonally Adjusted; Area – U.S. City Average; Item: Food and Beverages
    - Base Price – April 2024

The following formula will be used to calculate the maximum allowed price adjustment:

CPI for the current period – CPI for the Base Period = Index Point Change
Index Point Change ÷ Base Period CPI = Index
Index x 100 = Percent Change (Maximum allowed price change)

If the price adjustment request is within the maximum allowed price change calculated with the database and formula above, the request will be granted by CJLP Group. If the request is above the allowed adjustment, CJLP Group may offer to adjust the price according to the maximum allowed by the above formula. Any item that receives an adjustment will be monitored at each of the following price periods for downward changes in the CPI-U. If the index lowers, CJLP Group will send notification to the vendor of the change in the CPI-U index and the price will be lowered based on the formula above but not lower than the original bid price.

Price Period	Change Request Due Date	Effective Date
July 1 – September 30	August 31	October 1
October 1 – December 31	December 1	January 1
January 1 – March 31	March 1	April 1
April 1 – June 30	May 31	July 1

If no price adjustment requests are received, the current price will remain in effect.

11. PROCESSING OF USDA DONATED FOOD TO END PRODUCTS: The awarded bidder agrees to comply with USDA National Policy Memorandum FD-119 dated February 13, 2012. Including but not limited to:

    1. The bidder must be approved by the appropriate state agency to participate in the USDA's Net Off Invoice/Value Pass Thru Program.
    2. Only end products with approved end product data schedules, and that meet substitution and grading requirements in 7 CFR 250.30 may be provided.
    3. The district must receive credit for the value of the donated foods contained in the end products through a discount from the gross case price. The discount must be noted on the invoice for each USDA processed end product. Crediting for USDA donated foods must be performed in accordance with the applicable requirements in §250.36.
    4. The bidder must collaborate with the processor to ensure the CJLP Group is an eligible participant of end products and to ascertain the quantity of end products, or the value of donated food, for which the CJLP Group is eligible.
    5. The bidder must provide notification to the processor of end product sales so that the appropriate inventory draw-down may occur. Further, the successful bidder will support the diversion of multiple donated foods to a single end product (e.g. the diversion of cheese, flour, and tomatoes to pizza).

12. PRODUCT PROTECTION GUARANTEES: The CJLP Group will have automatic product protection recourse against suppliers for products that are misrepresented. According to federal regulations, the supplier whose name and address appear on the package is the responsible party. Bidders are expected to take immediate action to correct any situation in which product integrity is violated.

13. DELIVERY TIME: Acceptable delivery times will be between 6:30 a.m. and 2:30 p.m. Deliveries are to be made to individual schools on a weekly basis. No minimum dollar or case amounts shall

be required for the weekly delivery. Additionally, the CJLP Group may occasionally request additional deliveries or special arrangements from time to time and awarded bidder shall respond with no extra charge.

Specific delivery dates and times shall be negotiated with each School Nutrition Director.

14. DELIVERY PROCEDURES: Drivers and helpers shall deliver merchandise into designated storage areas. Drivers or helpers shall not be required to store merchandise on shelves. Drivers may request the authorized school receiver to verify the accuracy of quantities delivered. Shortages, damages and substitutions shall be noted by the driver to the receiver and noted on the delivery ticket. This signature will only indicate that the order has been received and will not indicate that the invoice has been reconciled to the actual items delivered. All products shall be maintained at their proper temperature throughout their staging, loading, transport and delivery. All of the vendor's facilities and delivery vehicles must conform to local, state and federal rules and regulations regarding sanitation and are subject to inspection by the CJLP Group. Each driver is to sign in at each school cafeteria upon entering the building. Invoices will be left at each school.

    It is understood that deliveries are not to be made when school is not in session with exception of the opening of school. Calendars will be provided (upon request) to the successful bidders to designate off-school days. When school is cancelled because of inclement weather or any other emergency and the delivery truck is already in route, upon arrival the company driver must contact the School Nutrition Director by telephone for instructions. The school system reserves the right to accept the delivery, authorize another acceptance signature, or to return the delivery. If the truck has not left the distributor's warehouse, the delivery will be made on the next day that schools are re-opened unless notified otherwise.

    An emergency delivery communication plan is to be completed and provided for each County of the CJLP Group upon award.

    Returns shall be restocked at no charge to the CJLP Group.

15. DELIVERY FAILURE: If the vendor fails to deliver an order, the vendor shall take corrective action by either making a special delivery to the school or by arranging for delivery by another vendor. The vendor shall incur any extra cost difference between the price of the originally ordered items and the price of the alternate vendor. This delivery will be made within 48 hours of the original delivery day. The vendor will provide any overtime pay incurred by any of the school district employees if a late delivery occurs.

    NOTE: The awarded bidder is responsible for ensuring all the delivery personnel have the correct item numbers and prices loaded into their inventory system upon making delivery to the facility. Items delivered that were not ordered, loaded incorrectly or labeled incorrectly shall be returned without cost to the CJLP Group.

16. NUTRITIONAL INFORMATION: Distributor will provide Product Specification Sheets, CN Label Sheets, Nutrient Data Sheets, and Country of Origin documentation on products listed on the order guide, upon request from the Food Service Director. Nutritional Information Sheets must be provided as manufacturer updates occur and when new products are added to the order guide.

17. PRODUCT SPECIFICATIONS:

1. Trans-Fat Free – Food products and ingredients used to prepare school meals must contain zero trans-fat (less than 0.5 grams) per serving.
2. No items shall be bid that contain peanuts/nuts. Any item bid that contains the statement "may be processed in a facility that contains nuts" or like statement shall be clearly identified on the bid document. The Group reserves the right to reject any item with this statement. These items will be returned at no cost to the Group.
3. Quantities are merely an approximation of the anticipated usage for the 2024-2025 school year, and should not be considered a firm order. The receipt of USDA commodities and changes in student preferences affect purchase quantities.

18. Buy American Provision (See Attachment E)

The bidder will abide by the Buy American Provision added to the National School Lunch Act (NSLA) by Section 104(d) of the William F. Gooding Child Nutrition Reauthorization Act of 1998 (Public Law 105-336). Section 12(n) to the NSLA (42 USC 1760(n)). This provision requires all school food authorities (SFAs) to purchase, to the maximum extent practicable, domestic commodity or product. Schools participating in the federal school meal programs are required to purchase domestic commodities and products for school meals to the maximum extent practicable (7 CFR Part 210.21(d)). Federal regulations require that all foods purchased for the Child Nutrition Program be of domestic origin to the maximum extent practicable.

Domestic commodity or product means an agricultural commodity that is produced in the US and a food product that is processed in the US substantially (at least 51 percent) using agricultural commodities that are produced in the US. "Substantial" means that over 51 percent of the final processed product consists of agricultural commodities that were grown domestically. Products from Guam, American Samoa, Virgin Islands, Puerto Rico, and the Northern Mariana Islands are allowed under this provision as territories of the United States.

The bidder will provide documentation to the CJLP Group prior to shipment for each product. **Documentation must include item number, item description, country of origin, and exception rationale (if not a domestic product).** Allowable exceptions to the Buy American Provision are limited to: 1) the product is not produced or manufactured in the United States in sufficient, reasonable and available quantities of a satisfactory quality, such as bananas and pineapple; and 2) competitive proposals reveal the cost of a domestic product is significantly higher than a non-domestic product. Any substitution of a non-domestic product for a domestic product (which was originally a part of the solicitation), must be approved, in writing, by the Food Service Director, prior to the delivery of the product to the school.

If the respondent feels the cost of the domestic product is significantly higher, they must list the price of the domestic product as well as the non-domestic product price on the bid worksheet along with the Country of Origin. The decision to purchase the domestic or non-domestic product will rest with each individual Child Nutrition Director of the Group.

Any non-domestic product delivered to the School, without the prior, written approval of the Food Service Director, will be rejected.

19. PAYMENTS: Each school district and/or school shall be responsible for making payment to the awarded bidder. Normally, school districts pay bills only after approval from the Board of Education which meets monthly.

20. AUDITS:

    a. The CJLP Group reserves the right to make audits of awarded bidder's costs records as follows:
        i. Prior to award of contract
        ii. Prior to approval of request for price change and following any allowed price change.
        iii. At time of one year contract extension if awarded.
        iv. An unscheduled audit one time during each one year bid period upon appropriate notice given to awarded bidder.
    b. The awarded bidder shall be given notice of the intent of the CJLP Group to conduct an audit a minimum of two weeks in advance.
    c. The audit may be conducted electronically via the internet or at a site mutually agreeable to the CJLP Group and the awarded bidder.
    d. The awarded bidder shall provide acceptable documentation as follows:
        i. Manufacturer's invoices
        ii. Freight bills
        iii. Perpetual inventory records
        iv. Market bulletins (used for distributor manufactured items and inner company billing items when price change occurs).

21. KENTUCKY BROKER SERVICE: Awarded bidder is encouraged to utilize Kentucky brokers whenever possible.

22. PRODUCT EVALUATION: Samples requested must be furnished free of expense to the CJLP Group for evaluation. If not destroyed or consumed in testing or evaluating, or required in connection with the award, furnished samples will, upon request, be returned at the bidder's expense. Right is reserved to mutilate or destroy any samples if considered necessary for testing purposes.

23. It is the policy of the CJLP group that employees do not purchase any items for themselves at school, therefore, we expect your company to comply with this policy.

24. In the event that the vendor should, by mistake, deliver and invoice items at the wrong price, the school district shall notify said vendor within ten (10) working days of the invoice. The vendor will then have fifteen (15) days to repair the invoice. If the repair of the invoice is not done within said days, the school district may elect to cancel the contract.

Attachment A

Checklist of Requirements for Proposals

- ☐ Complete print out of product list (all columns and rows completed)
- ☐ Demonstration of financial stability, such as supplier credit reference
- ☐ Name and contact information of three school districts or schools of similar size and characteristics that may be contacted for references
- ☐ Identification of any contract requirements that cannot be fully met.
- ☐ Completed and sign cover sheet "CJLP Group School and Community Nutrition – Prime Vendor Proposal" form (Attachment B) – place on top of RFP
- ☐ Completed and signed form– "Certification Regarding Lobbying" (Attachment C)
- ☐ Completed and signed form– "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions (Form AD-1048 (1-92))" (Attachment D)
- ☐ Description of procedures (Attachment F)
- ☐ Delivery Information (Attachment G)

Attachment B

CJLP GROUP

SCHOOL & COMMUNITY NUTRITION

Clay County – Jackson County – Laurel County – Pulaski County

THIS CERTIFICATE MUST BE EXECUTED BY THE BIDDER

In compliance with the Request for Proposal; in consideration to the detailed description attached hereto; and subject to all conditions thereof, the undersigned agrees, if this proposal be accepted within the time stipulated above, to furnish service to all schools in accordance with the specifications stated herein.

(Please print or type the following information.)

Distributor Name _____

Distributor Address _____

_____

_____

Signature: (authorized representative) _____

Printed Name _____

Title _____

Date _____

Contact Name _____

Title _____

Phone _____

Fax Number _____

Email _____

Attachment C

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements
The undersigned certifies, to the best of his or her knowledge and belief, that:

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

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

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

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

Organization Name PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature Date

Attachment D

U.S. DEPARTMENT OF AGRICULTURE

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

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

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

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

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

Organization Name

PR/Award Number or Project Name

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

Signature(s)

Date

Form AD-1048 (1/92)

Instructions for Certification

1. By signing and submitting this form, the prospective lower tier participant is providing the certification set out on the reverse side in accordance with these instructions.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," " lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this form that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Attachment E

USDA

United States Department of Agriculture

Food and Nutrition Service

Park Office Center

3101 Park Center Drive
Alexandria
VA 22302

DATE: June 30, 2017

MEMO CODE: SP 38-2017

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

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Original Signed

Sarah E. Smith-Holmes
Director

Program Monitoring and Operational Support

Child Nutrition Programs

Questions and Answers for the Buy American Provision

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

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

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

2) Does the Buy American provision apply to entities that purchase on behalf of an SFA, such as a purchasing cooperative or a food service management company?
Answer: Yes. Any entity that purchases food or food products on behalf of the SFA must follow the same Buy American provisions and exceptions that the SFA is required to follow.

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

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

Answer: To ensure compliance with the Buy American provision the SFA must ensure solicitations and contracts include the requirement for domestic agricultural commodities and products, include this requirement in its documented procurement procedures, and retain records documenting any exceptions.

Examples of specifications that SFAs may use in solicitations and contracts to comply with the Buy American provision include:

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

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

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

5) How can SFAs comply with the requirement to retain records, which should include documentation of exceptions in adhering to the Buy American provision?
Answer: Below is sample language that SFAs should use in solicitations and contracts to comply with the requirement to retain records documenting any exceptions to the Buy American provision:

I. Exceptions to the Buy American provision are very limited; however, an alternative or exception may be approved upon request. To be considered for an alternative or exception, the request must be submitted in writing to a designated official, a minimum of ___day (s) in advance of delivery. The request must include the:
   (1) Alternative substitute(s) that are domestic and meet the required specifications:
      (a) Price of the domestic food alternative substitute(s); and
      (b) Availability of the domestic alternative substitute(s) in relation to the quantity ordered.
   (2) Reason for exception: limited/lack of availability or price (include price):
      (a) Price of the domestic food product; and
      (b) Price of the non-domestic product that meets the required specification of the domestic product.

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

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

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

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

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

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

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

SFAs may also include the following statement in the bidding process: "We require bidders to certify that ___(insert product name)___ was processed in the U.S. and contains over ____(insert % of weight or volume) of its agricultural food component from the U.S.," with space for the supplier to fill in the name of the product and its percentage of the domestic agricultural food component (by weight or volume) contained therein.

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

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

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

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

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

Attachment F

Will a Customer Service Representative be assigned to handle all aspects of the account (ordering, delivery, invoices, billing corrections, returns, etc.) One contact for all issues? Yes or No

If yes, how many years of service in the School Food Industry? _____

List services that will be provided by the assigned Customer Service/Account Representative. Include description of how these services will facilitate maximum time and cost savings to the CJLP Group.

Describe procedures for notifying FSD of out of stock items/substitute products:

Can orders be edited after submission? Yes or No

If yes, what are the procedures for editing orders and what is the deadline for order edits?

List delivery protocols on inclement weather days resulting in school closures? List delivery options and procedures to be followed for each option, including deadline to cancel an order.

Explain the process of communication to notify each Food Service Director of the Fresh Produce prices each week.

Attachment G

ALL BIDS MUST INCLUDE THIS COMPLETED FORM

Please indicate the day/days on which order(s) are to be placed (circle appropriate day/days for each county)

Clay County	Jackson County	Laurel County	Pulaski County
Monday	Monday	Monday	Monday
Tuesday	Tuesday	Tuesday	Tuesday
Wednesday	Wednesday	Wednesday	Wednesday
Thursday	Thursday	Thursday	Thursday
Friday	Friday	Friday	Friday

Please indicate the day/days on which order(s) will be delivered (circle appropriate day/days for each county)

Clay County	Jackson County	Laurel County	Pulaski County
Monday	Monday	Monday	Monday
Tuesday	Tuesday	Tuesday	Tuesday
Wednesday	Wednesday	Wednesday	Wednesday
Thursday	Thursday	Thursday	Thursday
Friday	Friday	Friday	Friday