



**Great Falls Public School  
Food and Nutrition Services  
1100 4<sup>th</sup> Street South  
PO Box 2429  
Great Falls, MT 59403**

**Great Falls Public School 2019-20 Food and Supplies Bid**

**Due Date and Time:**  
**July 16, 2021**  
**12:00 PM Local Time**

**Type of Contract:** Request for Pricing – Line Item

**Period of Contract:** August 1, 2021-July 31, 2022

**Contact Information**

**Bid Contact:**  
Jessa Youngers, Food Service Supervisor

**Issue Date:**  
June 10, 2021

**Phone: (406) 268-6047**

**Fax: (406) 268-7461**

**Email: [jessa\\_youngers@gfps.k12.mt.us](mailto:jessa_youngers@gfps.k12.mt.us)**

**Instructions to Bidders**

Follow instructions (1.4.2) to access the NUTRIKIDS Vendor Bid Program; submit completed bid using required NUTRIKIDS software and Lobbying Certification (Attachment A) to email listed above. **Note section 1.4.3** requires submittal of nutrition information for products bid. **Section 1.4.4** requires submittal of complete listing of special order items.

Subject Line Must Include GFPS Food and Supplies Bid and Your Company's Name

**IMPORTANT: SEE STANDARD TERMS AND CONDITIONS**

## Standard Terms and Conditions

**By submitting a response to this request for proposal or acceptance of a contract, the vendor agrees to acceptance of the following Standard Terms and Conditions and any other provisions that are specific to the solicitation or contract.**

**ACCEPTANCE/REJECTION OF BIDS, PROPOSALS, OR LIMITED SOLITATION RESPONSES:** Each item must be specifically addressed according to the description in the Vendor Bid Specifications. Vendors taking exception to any requirements listed may be found nonresponsive. The District reserves the right to accept or reject any or all bids, proposals, or limited solicitation responses, wholly or in part, and to make awards in any manner deemed in the best interest of the District.

**ACCESS AND RETENTION OF RECORDS:** Contractor agrees to provide the District, or their authorized agents, access to any records necessary to determine contract compliance. Contractor agrees to create and retain records supporting the services rendered or supplied delivered for a period of three years after either the completion date of the contract or the conclusion of any claim, litigation, or exception relating to the contract.

**ASSIGNMENT, TRANSFER, AND SUBCONTRACTING:** Contractor shall not assign, transfer or subcontract any portion of the contract.

**AUTHORITY:** The attached bid, request for proposal, limited solicitation or contract is issued under authority of Montana Code Annotated, MCA 20-9-204 section 4.

**COMPLIANCE WITH LAWS:** Contractors shall, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including but not limited to, the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. In accordance with 49-3-207, MCA, Contractor agrees that the hiring of persons to perform this contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing this contract.

**CONFORMANCE WITH CONTRACT:** No alteration of the terms, conditions, delivery, price, quality, quantities, or specification of the contract shall be granted without the Districts prior written consent.

**DEBARMENT:** Contractor certifies, by submitting this bid or proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this contract by a governmental department or agency.

**DISABILITY ACCOMMODATIONS:** The District does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals who need aids, alternative document formats, or services for effective communications or other disability related

accommodations in the programs and services offered are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

**FAILURE TO HONOR BID/PROPOSAL:** If a bidder/offeror to whom a contract is awarded refuses to accept the award (PO/Contract) or fails to deliver in accordance with the contract terms and conditions, the District may, in its discretion, suspend the bidder/offeror for a period of time from entering into any contracts with the District.

**HOLD HARMLESS/INDEMNIFICATION:** Contractor agrees to protect, defend, and save the District, board of directors, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of Contractor's employees or third parties on account of bodily or personal injuries, death or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of Contractor and/or its agents, employees, representatives, assigns, except the sole negligence of the District, under this agreement.

**LATE BIDS AND PROPOSALS:** Regardless of cause, late bids and proposals will not be accepted and will automatically be disqualified from further consideration. It shall be solely the vendor's risk to ensure submission through the designated method and by the designated time.

**SHIPPING/PRICING:** All supplies shall be shipped prepaid, F.O.B Destination, and include all charges that may be incurred in fulfilling the terms of the Agreement.

**WARRANTIES:** Contractor warrants that the products offered conform to the specification requested, are fit and sufficient for the purpose manufactured, are of good material and workmanship, and are free from defect. Contractor further warrants that the products are new and unused and of the latest model or manufacture, unless the State specifies otherwise. Exceptions will be rejected.

## **SECTION 1: GENERAL REQUIREMENTS**

### **1.0 Introduction**

Great Falls Public Schools (hereinafter referred to as “the District”) is soliciting bids for food and nonfood items in the following categories: CANNED, DRY, REFRIGERATED/FROZEN, PAPER & SUPPLIES to be distributed to recipient schools twice weekly during the 2021-22 school year (August 1, 2021-July 31, 2022). A more complete description of the food and supplies sought is provided within this Line Item – Request for Pricing. Bids submitted in response to this solicitation must comply with the instructions and procedures contained herein.

These prices can be made available (without changes to specifications) to other tax supported entities. However, all authority to make decisions with regard to specifications, limitations and item lists is retained by the District.

### **1.1 Background**

The school meals programs are administered at the federal level by the Food and Nutrition Service (FNS) of the U.S. Department of Agriculture (USDA). At the state level, the programs are administered by the Montana Office of Public Instruction (OPI).

Statutory authority for the Child Nutrition Programs (CNP) includes the Richard B. Russell National School Lunch Act (NSLA) and the Child Nutrition Act (CNA) of 1966. The statutory citations are, respectively, 42 United States Code 1751 et seq. and 42 United States Code 1771 et seq.

The District must comply with the requirements “passed down” to it from Congress, Office of Management and Budget (OMB), USDA and the OPI, including but not limited to the following, Code of Federal Regulations (CFR):

- 7 CFR Part 210 National School Lunch Program (NSLP); when applicable
- 7 CFR Part 215 Special Milk Program (SMP); when applicable
- 7 CFR Part 220 School Breakfast Program (SBP); when applicable
- 7 CFR Part 225 Summer Food Service Program (SFSP); when applicable
- 7 CFR Part 226 Child and Adult Care Food Program (CACFP); when applicable
- 7 CFR Part 245 Determining eligibility for free and reduced price meals and free milk in schools
- 7 CFR Part 250 Food Distribution Program; when applicable
- 7 CFR Part 3016 and/or Part 3019; when applicable
- 7 CFR Part 3052 Audit Requirements
- USDA and OPI program regulations, guidance and instructions
- State law, regulations and policies that are not in conflict with federal requirements
- Local law, regulations and policies that are not in conflict with federal requirements

### **1.2 Period of Contract**

This agreement shall cover the period from August 1, 2021 through July 31, 2022.

This contract may be renewed for a period of up to two (2) successive contract periods.

### **1.3 Instructions to Bidders**

#### **1.3.1 Contract Manager Contact Information:**

Contract Manager: Jessa Youngers  
Telephone Number: 406-268-6047  
Address: 1100 4<sup>th</sup> Street South, Great Falls, MT 59405  
E-Mail Address: [jessa\\_youngers@gfps.k12.mt.us](mailto:jessa_youngers@gfps.k12.mt.us)

**1.3.2 Examination of Solicitation Documents:** Bidders are responsible for examining the solicitation documents issued to become informed as to all conditions that might in any way affect the cost or performance of any work. Failure to do so will be at the sole risk of the bidder.

**1.3.3 Estimated Quantities:** The quantities specified on the RFP Forms are estimates only, and are given for the information of bidders and for the purpose of bid evaluation. They do not indicate the actual quantity which will be ordered and shall not be construed to represent any amount which the District shall be obligated to purchase. The estimated quantities do represent the best good faith estimate of the number of items that will be required. No proposal will be considered which stipulates that the District guarantee to order a specific quantity of any item.

#### **1.3.4 Time Schedule:**

June 10, 2021 Solicitation Date  
June 15, 2021 Request for Information Cut-Off at 12:00 p.m., MST  
July 16, 2021 Bid Proposal Due Date at 12:00 p.m., MST

**1.3.5 Request for Information:** Any questions concerning the RFP should be directed to Jessa Youngers at [jessa\\_youngers@gfps.k12.mt.us](mailto:jessa_youngers@gfps.k12.mt.us). All questions must be submitted by the information cut-off date listed above. Questions received after this date will not be considered. Answers to the questions will be posted on the Great Falls Public Schools website with proposal information for all prospective respondents to view.

**1.4 Bid Submission** To complete the bid the following items need to be filled out and/or returned:

**1.4.1 Bids Must Be Submitted Via Email ONLY** to [jessa\\_youngers@gfps.k12.mt.us](mailto:jessa_youngers@gfps.k12.mt.us) no later than 12:00 PM, local time, Friday, July 16, 2021. Instructions for completing the Bid using the required NutriKids software program are provided in 1.4.2 below.

#### **1.4.2 Vendor Bid Program Instruction**

**You must have Internet access to download the NutriKids Vendor Bid Program.** There is no fee for this program. You may need to have your IT department download this program for you based upon your security settings. The program MUST be loaded under the User's Profile. If you have any questions or problems, please call NutriKids at 800-724-9853, option 6.

**Save file(s) named DocNum00\_\_.nbd to your desktop.**

### Downloading Program – (for new users)

- 1) Open your Browser (i.e.: Internet Explorer, Netscape Navigator)
- 2) In Address box, enter [http://www.nutrikidsonline.com/Apps/PI/Vendor\\_Bid/nkvenbid.exe](http://www.nutrikidsonline.com/Apps/PI/Vendor_Bid/nkvenbid.exe)
- 3) You will get a page asking if you want to Open, Save or Cancel
- 4) Click on Save
- 5) You should get another screen that says “Save in”. Hit the down arrow and select Desktop
- 6) Click Save in bottom right hand corner, and the file will start saving

### Installing Program –

- 1) On your desktop, you should see an Icon that reads *nkvenbid.exe*
- 2) Double click the Icon to run and install the program. Click on *I Agree* for licensing information, next, next, finish – you should now see an apple icon on your desktop

### Importing File (from school district)

- 1) When you open the Vendor Bid program up, you will see a screen that says ‘Look In’ – hit the down arrow next to that box and select the Desktop
- 2) Double click on the file you have saved to the desktop that was sent from school (file name should be DocNum00\_\_ (number).nbd
- 3) You should now see a screen with the Items, Pack Size, Estimated Qty’s, etc.

### Completing the Bid Process

- 1) Highlight the first item you want to bid on by clicking on it
- 2) On the bottom left hand side of screen, you will see the product specifications and the pack size the school has entered. On the bottom right, place a check mark in the box that says “Bid”
- 3) Fill in each field – Brand/Product Number, Vendor Item Number, Pack Size (case, 25#Bag, etc.), Stock Units per Pack Size (how many in the case of Each, LB, etc.) and the Bid Price.
- 4) Click on next Item you would like to Bid on, fill in information. Proceed until all Items you would like to bid on have been completed.

### Exporting File

- 1) Once the Bid is complete, click on Export at top tool bar
- 2) At top of screen, you will see “Save In” – hit the down arrow and select the Desktop
- 3) Click Save at bottom right of screen –**DO NOT CHANGE THE NAME OF THIS FILE (if you have more than 1 bid document, please follow instruction below)**
- 4) **YOU MUST COMPLETE ONE DOCUMENT AT A TIME!!!**
  - A) **Import Document** you want to enter information for. Once complete, click on **Export at top tool bar.**
  - B) **At next screen, you will see “Save In” – hit the down arrow and select Desktop.**
  - C) **At bottom, where it says File Name, leave the abbreviation there, click after the code name – before the dot and enter the number of the document –**

Ex: if school sends you DocNumSys0003.nbd and DocNumSys0004.nbd, when you enter info for the first document, export and name file to Sys0003.nkd – you will do the same after you import the second document, enter information, Export and name file Sys0004.nkd, etc. PLEASE CALL NUTRIKIDS IF YOU ARE UNSURE OF INSTRUCTION

- 5) The name of the file should have an abbreviation of the Vendor name followed by nkd. You can save the file to a cd (save the file to the desktop first, then use a program to burn to cd) or save to a memory stick. Please call if you need assistance with this.

1.4.3 Child Nutrition (CN) Labeling, Product Formulation Statements and Nutrition/Allergen Information: Must be submitted via email or other electronic mode (i.e. flash drive, preferred) at time of the bid submittal. **Electronic documents must be identifiable by the Vendor item numbers.**

1.4.4 Special Order Items (New Section): Each vendor must supply a complete listing of items that will be listed as special order and NOT stocked in the vendor warehouse. For each item, please indicate the lead time necessary for receiving.

1.4.5 Late Bids: Regardless of cause, late bids will not be accepted and will automatically be disqualified from further consideration. It shall be the bidder's sole risk to assure delivery via email by the designated time.

## **1.5 Bid Awards**

1.5.1 Basis for Award: Bid award, if made, will be based on line item pricing to the responsive and responsible bidder who offers the lowest cost to the District in accordance with the specifications and estimated quantities set forth.

1.5.2 Award Timeline: After opening of the proposals, the official award date will be no later than the week of July 26, 2021.

1.5.3 Bid Assessment: The RFP forms will be analyzed for integrity regarding brand names, pack sizes, grade specifications, etc. All questions that arise during this process will be forwarded to the appropriate contractor contact person. Each contractor is encouraged to provide separate line item pricing on any available products which meet the specification. The line item award will normally be made to the lowest responsible bidder upon completion of product verification and bottom line cost extension comparisons, provided the service and quality are considered to be comparable to that offered by other bidders, but the right is reserved to make the award to other than the lowest bidder when it is in the best interest of the District. The District will be the sole judge as to the conditions affecting such interest. The District reserves the right to check a sufficient number of references as a deciding factor. The District reserves the right to waive any and all formalities and irregularities and to reject any or all bids and add or delete item quantities. Should the RFP contain items that are not bid, the District reserves the right to negotiate with any vendor or award to another vendor.

1.5.4 Product Rejection: Any awarded product that subsequently does not conform to quality expectations may be dropped or changed. The District will provide 30 days advance written notice when and if this occurs. Each successful contractor will be given the opportunity to rebid an alternate item as appropriate.

## SECTION 2: ORDERING AND DELIVERY REQUIREMENTS

### **2.1 ORDERING REQUIREMENTS**

**2.1.1 Ordering.** The District uses NutriKids Purchasing program for orders from the schools. Weekly orders come from NutriKids and will be emailed to the sales representatives. Orders done on a monthly basis are in an excel spreadsheet and will be sent to sales representatives via email.

**2.1.2 Promotions.** If manufacturers' agents or brokers desire to promote a product, approval must be obtained from the Foodservice Director. Individual schools are not to be visited. The Foodservice Director will hold a meeting to present products to the appropriate audience.

Product promotions, sale pricing, handling of credits, etc., will be handled for each school through the Food Service Director and a contractor representative.

### **2.2 DELIVERY REQUIREMENTS**

**2.2.1 Contractor Supply.** *The contractor shall maintain sufficient merchandise levels at all times to insure that there is little, if any, interruption in service in meeting the needs of the District.* The contractor must notify the District Foodservice Director or Food Service Office of anticipated shortages or changes in packing at least 72 hours prior to delivery of such items. Contact should be made during business hours (7:30 AM to 4:30 PM), Monday through Friday, by calling 268-6047 or via email to [Debbie\\_taylor@gfps.k12.mt.us](mailto:Debbie_taylor@gfps.k12.mt.us) and [jessa\\_youngers@gfps.k12.mt.us](mailto:jessa_youngers@gfps.k12.mt.us).

**2.2.2 Delivery Schedules.** The delivery schedule will be as follows:

Delivery Days:

Production Kitchens and North Middle School: Monday and Thursday **between 6:00 AM and 7:30 AM**. As early as 5:00 AM is acceptable for CMR and Paris Gibson Education Center and 5:45 AM for GFH.

Warehouse: Monday through Friday from 8:00 AM to 3:30 PM

Delivery days shall remain constant from week to week with the exception of weeks when holidays or closed days (inclement weather, teacher workdays etc.) fall on a scheduled delivery day, deliveries shall be made on the next school day or as mutually agreed upon. Each school division shall supply the contractor with school calendars.

*\*\*If delivery schedules fall behind for any reason, the contractor should notify the affected school and Food Service Office immediately. It is critical to note that deliveries at production kitchens will not be accepted after 1:00 PM.*

**2.2.3 Minimum Shipments.** Minimum shipments shall not apply to this Agreement. However, the Food Service Director will make a concerted effort to consider increasing drop shipment sizes as able.

**2.2.4 Out of Stock.** If the contractor is temporarily out of stock of a particular item, he may deliver an equal or superior product with the *same nutritional value* at an *equal or lower price*, with prior approval of the Food Service Director.



However, in all such instances, each substitution should be labeled clearly as such on each invoice with a separate item code. Substitutions should only exist in “emergency” situations. Frequent substitutions or failure to fulfill the order-to-fill ratio requirements may be cause for cancellation.

2.2.5 Discontinued Product. If a product is discontinued, a written explanation from the manufacturer stating that the product is no longer being manufactured must be sent to Jessa Youngers. Letters from brokers and distributors are not acceptable in lieu of a manufacturer’s letter.

2.2.6 Cancellations/Rejections. Each school reserves the right to cancel part or all of an order without penalty or service charge. Each school reserves the right to inspect goods upon delivery and return said product should the condition or quality of the product be deemed unsatisfactory as determined by authorized school employees. For items that are identified as unsatisfactory upon receipt, the contractor driver shall take said items back and deduct the appropriate dollar amount on all copies of invoices before the school divisions will accept the remaining items on the invoice.

For products that the production manager or other authorized school employee determines to be unsatisfactory after receipt, upon notification, the contractor shall issue a “credit” or “pick-up authorization.”

2.2.7 Deliveries.

Delivery Sites:

Paris Gibson Education Center: 2400 Central Ave	268-6617
Great Falls High School: 1900 2 <sup>nd</sup> Ave S	268-6298
CMR High School 228 17 <sup>th</sup> Ave NW	268-6158
East Middle School: 4040 Central Ave	268-6458
North Middle School: 2601 8 <sup>th</sup> Street NE	268-6551
GFPS Central Warehouse: 1100 4 <sup>th</sup> Street S	268-6066

All items will be delivered to and placed within the building for which they are purchased. Tailgate delivery will not be accepted. **All items are to be completely delivered, unloaded, and placed in the designated storage area within the building.**

The contractor driver may not leave the premises until an authorized school employee has signed for the delivery.

The contractor will provide and maintain in a sanitary manner refrigerated/frozen delivery trucks on which fresh and frozen products are delivered. The successful contractor shall adhere to HACCP principals and standards during procurement, storage, and delivery. Two or three compartment trucks are preferred so that frozen items remain frozen and damaged boxes are kept to a minimum.

## SECTION 3: SPECIFICATIONS AND PRICING

### **3.0 Requirements**

Requirements designated in this bid must be satisfied, or a functional equivalent bid submitted, which is acceptable to the District. Specific Brand (where noted) and/or manufacturer product numbers are given for purposes of identification and to denote the standard of quality desired and do not, in any way, restrict bidders to specific brands or manufacturers. In some cases a specific product may be noted as “Not Acceptable” based on previous use/sampling.

If there is any deviation in the pack, source, quality, etc. of an item requested, from that described in the specifications, the difference must be clearly indicated. The bidder must also be prepared to provide a sample if requested. If there is a deviation in the pack of an item, and all else appears to satisfy the specifications as described, the District reserves the right, for evaluation purposes only, to reduce such a deviation to a common denominator, so that equal quantities are considered for all bidders.

### **3.1 Samples**

The District reserves the right to require a bidder to furnish samples of any item on which he submits a bid within five (5) working days after the request is made. The samples must be furnished FREE of charge, clearly marked “SAMPLE” and delivered to:

Great Falls Public Schools  
Food and Nutrition Services  
1100 4<sup>th</sup> Street South  
Great Falls, MT 59405

These samples become the property of the District.

**For bid item numbers that specifically request a sample, contractors are encouraged to submit these when submitting the Bid.** Samples will be evaluated to determine compliance with all major characteristics of the brand name indicated. Failure of samples to conform to all such characteristics will require rejection of the bid for that particular item.

Failure to submit the requested sample shall be just cause for elimination of the bidder from further consideration for award of that item.

### **3.2 Buy American Provision**

As a sponsor of the National School Lunch and School Breakfast Programs, the District will consider only applicable products which comply with the requirements of the “Buy American” Act. Section 104(d) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 requires schools and institutions participating in the NSLP and SBP in the contiguous United States to purchase, to the maximum extent practicable, domestic commodities or products for use in meals served under the programs. The legislation defines “domestic commodity or product” as one that is produced and processed in the United States, substantially using agricultural commodities that are produced in the

United States. The report accompanying the legislations stipulated “substantially” means over 51 percent of the final processed product consists of agricultural commodities that were grown domestically.

**3.3 Pricing**

All pricing shall remain firm for the duration of the contract except for the following condition:

3.3.1 Contractors and the District agree price adjustments may be made during the contract under the following conditions:

When the US National Average Diesel Fuel Index is:

AT LEAST	BUT LESS THAN	FUEL SURCHARGE AMOUNT
115 cents	120 cents	0.5%
120 cents	125 cents	0.5%
125 cents	130 cents	1%
130 cents	135 cents	1.5%
135 cents	140 cents	2%
140 cents	145 cents	2.5%
145 cents	150 cents	3%
150 cents	155 cents	3.5%
155 cents	160 cents	4%

At 160 cents and above, the fuel surcharge will increase 0.5% with each five cent increase in the weekly fuel index. The fuel surcharge is to be adjusted on Tuesday of each week based on the US National Average Diesel Fuel Index of the prior Monday. The latest Diesel Fuel Index can be determined by calling the US Departments of Energy (1-202-586-6966).

The District reserves the right to contact manufacturers, brokers or other independent sources regarding the prevailing market conditions which warrant a price increase. Substantial midyear price increases without independent justification shall give the District just cause to bar from subsequent bid submissions.

<b>SECTION 4: BILLING AND PAYMENT REQUIREMENTS</b>
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**4.0 Invoices:** Each invoice shall indicate food sub-total and non-food sub-total.

**4.1 Statements:** A separate statement for each school will be prepared monthly. Statements will be forwarded no later than three (3) days after the last working day of the month to the appropriate school division.

Statements must contain:

Name and number of the school.

The total of each individual invoiced delivery for the period.

The total for all credits from shortages or damaged products for the period.

The total of all invoiced deliveries for the period (balance).

**4.2 Payments:** Payment shall be mailed after satisfactory performance of the contract, in accordance with all the provisions thereof, unless unusual circumstances exist. This will be no later than 20 days from the last day of the billing period.

## SECTION 5: SPECIAL TERMS AND CONDITIONS

**5.0 Food Laws and Inspection:** All products specified herein shall be processed, packaged and delivered in accordance with regulation of the Montana Department of Health, US Department of Agriculture and requirements of the Federal Food, Drug and Cosmetic Act.

All fresh and refrigerated products shall be free from spoilage.

An authorized representative of the District shall have the right to inspect the premises, facilities, and processing methods for producing items covered by this contract

The contractor must utilize Hazard Analysis Critical Control Point (HACCP) principals and systems to insure that food is purchased, stored and distributed in a sanitary manner. The contractor HACCP plan must be provided upon request. The contractor is encouraged to provide food temperature documentation records upon request.

### **5.1 Buyer/Contractor Relationship**

**5.1.1** The contractor is expected to interface with packers on problems related to product pack and quality.

**5.1.2** The contractor is encouraged to offer educational in-service and other value added services and will be considered at time of award.

**5.1.3** The District shall provide the contractor with menus upon request.

**5.1.4** The successful contractor shall provide copies of nutritional analysis, Child Nutrition labels and ingredient statement information for all items within 15 days of bid award

**5.1.5** Upon Foodservice Director request, the contractors shall be able to provide historical data on the number of awarded bid items delivered as of a certain date. This information will primarily be used for estimating quantities on subsequent bids.

**5.1.6** The successful contractors must provide a written statement on company letterhead stating that NO DELIVERY DRIVER who has been convicted of any offenses involving sexual molestation (or is currently under investigation) will be involved in the delivery of products to schools.

### **5.2 Non-Performance of Contract and Termination**

Except as may be otherwise provided by this document, the awarded contract may be terminated in whole or in part by either party to the awarded contract in the event of failure by the other party to fulfill its obligations under the awarded contract through no fault of the terminating party; provided that no such termination may be implemented unless and until the other party is given:

A At least thirty (30) days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and

B An opportunity for consultation with the terminating party, followed by a reasonable opportunity, of not more than ten (10) business days or such other reasonable amount of time as may be required under the circumstances, to rectify the defects in products or performance, prior to termination.

### **5.3 Equal Employment Opportunity**

In accordance with federal law and USDA policy, the Contractor and District are prohibited from discrimination on the basis of race, color, national origin, sex, age or disability. In addition, the District affirms that it is an equal opportunity and affirmative action employer and shall comply with all applicable federal, state and local laws and regulations including, but not limited to, Executive Order 11246 as amended by 11375 and 12086; 12138; 11625; 11758; 12073; the Rehabilitation Act of 1973, as amended; the Vietnam Era Veterans Readjustment Assistance Act of 1975; Civil Rights Act of 1964; Equal Pay Act of 1963; Age Discrimination in Employment Act of 1967; Immigration Reform and Control Act of 1986; Public Law 95-507; the Americans with Disabilities Act; Department of Labor Regulation (41/CFR, Part 60), and any additions or amendments thereto.

### **5.4 Clean Air Act and Water Pollution Control Act**

As specified in 7 CFR, Section 3016.36 (i)(12), the Distributor and the District must comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 USC 1857(h)), section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15), which prohibit the use under non-exempt federal contracts, grants, or loans of facilities included on the EPA list of Violating Facilities. Violations shall be reported to the USDA and to the USEPA Assistant Administrator for Enforcement (EN-329).

### **5.5 Suspension and Debarment, Voluntary Exclusion**

By signing this contract, the distributor certifies that it is not suspended, debarred, or voluntarily excluded from federal financial or non-financial assistance, nor are any of the participants involved in the execution of this Contract suspended, debarred or voluntarily excluded.

Further, the Contractor agrees to notify the SFA by certified mail should the Contractor or any of its agents become debarred, suspended or voluntarily excluded during the term of this Contract

### **5.6 Byrd Anti-Lobbying Amendment**

As specified in 31 U.S.C 1352 (Appendix II of 2 CFR Part 200 (j)), Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies 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 of employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered in 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 non-federal award.

**Attachment A: Lobbying Certification**

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

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

1. No Federal appropriated funds have been paid or will be paid or on behalf of the undersigned, to any person for influencing or attempting to influence and 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, making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "disclosure Form to Report Lobbying", in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all covered sub-awards exceeding \$100,000 in Federal funds at all appropriate tiers and that all sub-recipients shall certify and disclose accordingly.

Distributor Name: \_\_\_\_\_

Authorized Representative: \_\_\_\_\_  
(Printed Name and Title) Date

Authorized Representative: \_\_\_\_\_  
(Signature) Date