

Granville County Schools (GCPS) School Nutrition

DISTRIBUTOR IFB/CONTRACT



Terms and Conditions

Contract Period: August 1, 2026 – July 31, 2027

Approved by GCPS

May 22, 2026

This Distributor Bid IFB – Contract is updated annually by GCPS to meet USDA regulatory policy, provide efficient and effective functioning of the School District and provide the School District and the Distributor clarification which does not significantly alter the terms and conditions of the contract. School Districts and Distributors agreeing to renew this IFB are responsible for review of the updated IFB – Contract.

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If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online at http://www.ascr.usda.gov/complaint_filing_cust.html, or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at program.intake@usda.gov. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339; or (800) 845-6136 (in Spanish). USDA is an equal opportunity provider and employer.

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1.0 FEDERAL COMPLIANCE

- 1.1 FEDERAL COMPLIANCE:** The School Nutrition Programs receiving goods and services under this Contract are federally funded programs operated under the authority of the **United States Department of Agriculture** (USDA). This IFB and the subsequent Contract shall be **COMPLIANT** with 7 CFR Parts 210, 220, 225, 250, 2 CFR 200 and applicable cost circulars issued by the Office of Management and Budget (OMB) including A-87 Cost Principals, A -102 Administrative Requirements, and A -133 Audit Requirements.

2.0 GENERAL PROVISIONS OF THIS GCPS IFB – CONTRACT

- 2.1 THIS SOLICITATION IS INTENDED TO PROMOTE COMPETITION.** If the language, specifications, terms and conditions, or any combination thereof, restricts or limits the requirements in this solicitation to a sole source; it is the responsibility of the interested Distributor to notify Margaret Strong, GCPS School Nutrition Director, in writing via e-mail, at strogngm@gcs.k12.nc.us no more than **five (5) working days** after the date the IFB/CONTRACT is issued by the School District. The solicitation may, or may not, be changed, but a review of such notification will be made prior to the award of a Contract.
- 2.2 ADVERTISEMENT OF BID:** As required by the NC State Division of Purchase and Contract, solicitation for this IFB/Contract Bid has been advertised on the DPI Website. In addition, a public notice will be published on the Granville County Schools, School Nutrition website for a minimum of ten day prior to the bid release.
- 2.3 A WRITTEN ADDENDUM IS THE ONLY OFFICIAL RESPONSE METHOD WHEREBY INTERPRETATION, CLARIFICATION AND ADDITIONAL INFORMATION REGARDING THIS BID CAN BE GIVEN.** Once issued, all addenda shall become part of this contract. All addenda will be issued electronically to each Manufacturer known to have received the initial IFB/Contract. Addenda may be issued from the GCPS or the local school district within seven (7) calendar days prior to the bid opening date. However, before submitting an IFB/Contract, it shall be the responsibility of each Manufacturer to determine whether additional addenda were issued. **INQUIRIES** concerning interpretation or additional clarification or additional information pertaining to this IFB must be made in writing (electronic accepted) on behalf of GCPS within nine (9) calendar days prior to the bid opening date. For inquiries contact Margaret Strong – strongm@gcs.k12.nc.us
- 2.4 COST PRICING BY ITEM:** The Distributor will solicit the BEST MANUFACTURER OR PACKER “COST” PRICING BY ITEM BID - including freight - for the longest lock in period when negotiating contract pricing for foods and supplies on the behalf of the GCPS. Line items to be bid at the best cost are highlighted in yellow on the bid spreadsheets.
- 2.5 FIRM COST-PLUS FIXED FEE BID:** This method for calculation of this bid is Firm Cost-Plus Fixed Fee. The fixed fee is charged “per case” shall encompass the costs of the product’s distribution, financing and profit, production losses, analyses cost, waste, labor, overhead, and transportation costs of the line items

3.0 SCHOOL DISTRICT IFB – CONTRACT DECLARATIONS AND PROFILE

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

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

Granville County Schools reserves the right to use alternate local district bid documents and approved methods to award the bid.

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Granville County Schools reserves the right to reject any or all bids, or parts thereof, and to waive informalities and/or irregularities thereof.

Granville County Schools reserves the right to retain all Bids for a period of sixty (60) days or until approval by the Local Board of Education, whichever comes first. The submittal of a Bid shall constitute an irrevocable Offer to Contract with the School District. In accordance with the terms of the IFB/Contract, the offer may not be withdrawn until or unless rejected or not accepted by the School District.

Granville County Schools and this with all attachments and addenda hereto awarded will become the Contract between the School District and the awarded Distributor.

Granville County Schools reserves the right to add written **SPECIAL CONDITION(s)** to this IFB which details conditions that are specific to the School District. Special Condition(s) shall be titled as such are attached to the IFB in the Attachments Section. Special Conditions established by the School District as part of this IFB, and the Distributor's response to the Special Condition(s), shall become part of the Contract when awarded. A School District renewing a bid may update, or delete, Special Conditions of the original Contract; however, the District may not make changes that would substantially change the terms of the original agreement in a renewal. If Special Conditions are a part of this IFB, they are included in the Attachments section of the IFB/Contract. Special Conditions must be reviewed and agreed upon by the School District and potential Distributors **PRIOR to the Bid Award Opening**. If changes are made to the Special Conditions, the School District must issue a Local Amendment to all potential Distributors announcing the change a minimum of seven (7) working days prior to the IFB/Contract due date.

Granville County Schools requires the Distributor awarded the Contract be fully acquainted with terms and conditions relating to the scope and restrictions involved in the execution of the work described in this contract for Granville County Schools. Failure or omission of the Distributor to be familiar with existing conditions shall in no way relieve the company of obligation with respect to this Contract and may be grounds for disqualification.

Granville County Schools requires The Local School District issue the approved and appropriately signed **Official Certification Form** to the Awarded Distributor and the issue of a local **Purchase Order** to the Distributor as the **Final Bid Award**.

Granville County Schools will provide a SCHOOL DISTRICT PROFILE which includes pertinent information about the district such as the school names, addresses and current average daily breakfast and lunch meals served, average daily snacks served, district payment schedule and, where appropriate, average daily participation in the Summer Food Service Program, Seamless Summer Option or other meal program. The profile is found in the Attachments section of the IFB/Contract. The School District will provide the awarded Distributor the School Calendar, Menus and Estimated Product Usage.

4.0 DISTRIBUTOR MINIMUM QUALIFICATIONS

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

5.0 DISTRIBUTOR INSURANCE REQUIREMENTS

- 5.1 The Distributor awarded the Contract shall maintain all necessary insurance for the period during which purchases are made, including Comprehensive General Liability Insurance, Property Damage Insurance, Workers Compensation Insurance, and Automobile Liability Insurance. The Distributor must provide **Evidence of Insurance** in that it currently has, and agrees to purchase and maintain, during its performance under this Contract, from one or more insurance companies authorized to do business in the

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State of North Carolina. In addition, the School District Board of Education shall be named by endorsement as an additional insured on the General and Automobile Liability policies.

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

6.0 DISTRIBUTOR PERSONNEL REQUIREMENTS

- 6.1 The Distributor's personnel are to present a professional appearance always while on school property. Personnel shall be neat, clean, well groomed, properly uniformed and conduct themselves in a respectable and courteous manner while performing duties at any School District facilities.
- 6.2 The Distributor's personnel are forbidden to consume alcohol or use illegal drugs, use tobacco, or possess firearms on school property at any time.
- 6.3 The employment of unauthorized aliens by the Distributor is considered a violation of Section 247A (e) of the Immigration Reform and Control Act of 1986. If the Distributor knowingly employs unauthorized aliens, such a violation shall also be cause for cancellation of the Contract.
- 6.4 LUNSFORD ACT.** The Distributor acknowledges that N.C. General Statute 14-208.18 prohibits anyone required to register as a sex offender under Article 27A of Chapter 14 of the General Statutes from knowingly being on the premises of any school. This prohibition applies to persons required to register under Article 27A who have committed any offense in Article 7A of Chapter 14 or any offense where the victim of the offense was under the age of 16 years at the time of the offense. **LUNSFORD ACT** compliance is addressed in the **ATTACHMENT D.**

7.0 DISTRIBUTOR BID ERRORS AND PRICING REQUIREMENTS

- 7.1 BID ERRORS: The following two bid errors are non – negotiable and may result in bid disqualification.**
- (1) NO ORIGINAL SIGNATURE ON THE OFFICIAL DISTRIBUTOR BID CERTIFICATION FORM FOR A NEW OR RENEWAL BID.**
- (2) ANY CHANGE TO GCPS IFB/CONTRACT LANGUAGE BY THE DISTRIBUTOR**
- 7.2 BUY AMERICAN POLICY OF THE GCPS FOR BIDDING FROZEN AND SHELF STABLE CANNED FRUIT AND VEGETABLES:** All foreign brand product bid by the Distributor **will be tested for quality and**

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meeting bid specification prior to purchase by the Distributor for delivery to the School District. School Districts may request No Foreign Fruit or Vegetables in the Special Conditions section of the IFB/Contract.

7.3 BUY AMERICAN PROVISION AND COUNTRY OF ORIGIN: The Distributor shall comply with the USDA “Buy American” provision for Contracts that involve the purchase of agricultural products. Federal regulations require that all FOOD purchased for Child Nutrition Programs be processed in the USA and must contain over 51% of the product’s food component, by weight or volume, from U.S. origin. 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. While rare, two (2) exceptions may exist:

- (1) The product is not produced or manufactured in the U.S., in sufficient, reasonable and available quantities of a satisfactory quality; Note: USDA rules provide an exclusion for: Pineapples, Mandarin Oranges, Olives, Tuna, Bananas and Coffee. **Spices are exempt from the BA clause.**
- (2) Competitive bids reveal the cost of a domestic product is significantly higher than a non-domestic product.

USDA SP 38-2017 Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program states “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: meat/meat alternates, grains, vegetables, fruits and fluid milk.”

7.3.1 GCPS POLICY FOR BIDDING NON – DOMESTIC FROZEN AND SHELF STABLE CANNED FRUIT AND VEGETABLES: To provide Distributors a procedure when product availability is low, or significantly higher than non – domestic, the following guidance is provided: **U.S. grown, and packed fruits and vegetables are preferred.** But, if cost of the U.S. product exceeds a **10% per case increase over the foreign product and the foreign product meets GCPS bid spreadsheet quality specifications**, the foreign product may be bid. The country (countries) of origin (source) must be provided for **Lot 1 Frozen and Shelf Stable Fruits & Vegetables** in the column indicated on the bid spreadsheets. All foreign brand product bid by the Distributor will be tested for quality and meeting bid specifications prior to purchase by the Distributor for delivery to the School District. School Districts may request No Foreign Fruit or Vegetables in Special Conditions Section of the IFB Contract.

7.3.2 All non – domestic product bid is required to meet USDA Food Safety, Recall requirements, and specifications of the bid.

7.3.3 The USDA **Buy American Provision** requires the Country, or Countries of Origin, of ALL Non-Domestic food purchased from the Distributor be **approved in advance** by the School District CN Administrator. Changes to a products Country of Origin, not specified on the bid document, requires notification and written approval, in advance of delivery, of the product to the School District.

7.4 MULTIPLE FLAVORS AND VARIETIES FOR A SINGLE LINE ITEM: ONE PRICE is required for all flavors or varieties of the item the Distributor will stock. The Distributor and School District must communicate after the award as to flavors and volume to be stocked. **Multiple pricing per line item is not allowed.**

7.5 NON – STOCKS - The Distributor will insert the letters “NS” (**NON - STOCK**) in the block for the Distributor code to indicate it is a “non-stock” item due to low usage. **School District(s) will review Non - Stock items with the Distributor prior to the final bid award** to determine items required for their District, quantities intended, and lead order time as needed. This method is applicable for “NS” line items and “NS” flavors within a line item when multiple flavors are available. **The School District is responsible for purchasing non-stock (Special Order) products requested from the Distributor brought into stock on their behalf.** However, the

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school district will not be responsible for more than a 60 - day average usage, or the remainder of the minimum shipment, after notification to the Distributor the product will no longer be needed or ordered.

- 7.5 SPECIAL ORDERS:** If GCPS minimum usage of an awarded bid product, at a distributor house, is not sufficient for “slotting” the requested product, the School District(s) may **Special Order** the product at the required minimum shipment. The School District is responsible for purchasing all inventory of a Special Order made on their behalf. The Distributor may, but is not obligated, to store School District inventory from a Special Order for weekly delivery. **Note: If usage of an awarded bid item falls below the manufacturer minimum order level, the distributor shall notify the GCPS customer and OFFER a suitable substitute, if possible, from a GCPS awarded bid line products.**
- 7.6 QUANTITY REQUESTED PRICING –** The Distributor shall shop the market for the lowest price for the **quantity requested** on the bids received from GCPS school districts in order to reduce manufacturer changes.
- 7.8 SPREADSHEET PRICING DIRECTIONS:** The **DIRECTIONS TAB** is found on the **GCPS Bid Spreadsheets** and provides full direction details, by LOT category, regarding bid line items to be completed for pricing.
- 7.9 PRICE FOR EACH PRODUCT:** A cost price for one (1) pre-approved brand or, if applicable, one (1) private label is required for each bid specification identified for Distributor pricing in the bid spreadsheets. **If a private label is bid, the Brand Name, Code and Pack Size of the product bid must be written in under the word Private Label.** If a “0” quantity is shown in the Estimated Usage column, the Distributor is still to provide a bid price for the bid specification.

PRODUCT CODES AND PACK: All efforts are made to provide correct Manufacturer product codes and packs before bids are mailed. All interpretations of the specifications shall be made on the basis of the following statement: If the bidder discovers or suspects error in the item specification, product code number, pack size, or change in manufacturer formulation, the Distributor shall contact Margaret Strong, GCPS School Nutrition Director at strongm@gcs.k12.nc.us. The School District shall make the final determination of product equivalency and advise all potential bid parties through an e-mail Bid Addendum

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

8.0 FIRM FIXED FEE BID PROCEDURES FOR ALL LOTS & MILK BIDS.

- 8.1 FIRM FIXED FEE –**The Fixed Fee is charged “per case” shall encompass the costs of the product’s distribution, financing and profit, production losses, analyses cost, waste, labor, overhead, and transportation costs of the line items bid in LOTS 1 – 4, Milk Bids and when requested, LOT 1A.
- 8.2** The Fixed-Fee shall remain **firm for the duration** of the Contract, and for the duration of any Summer Nutrition Programs offered by the School Districts and any future Contract renewal period(s). Exceptions: Fuel Increase Force Majeure.
- 8.3** The Fixed-Fee will be the **same for ALL items in an individual LOT** for the pack size shown on the bid spreadsheet, EXCEPT for **LOT 4 PRODUCE. PRODUCE: FIXED FEE SPLITS** – Distributors should calculate the cost of case splits into the fixed fee structure as requested by the individual School District. **The fixed fee for “splits” is divided by the fraction of a case provided** – i.e. – a half case is the full fixed fee x .50; a quarter case is the full fixed fee x .25, etc. **The Distributor shall indicate the splits they will provide by checking the box provided on the line item of products that may be split. The total fixed fee shall encompass the potential splits required by the school district.**
- 8.4 FIXED FEE AND PRODUCT SUBSTITUTION:** In the event of a product substitution, the Fixed - Fee charged by the Distributor shall also apply to all other pre-approved brands in that specification and any optional brand priced or offered by the Distributor and approved by the School District for that bid specification.

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9.0 DISTRIBUTOR BID AWARD METHOD FOR LOCAL CONTRACTS (MILK & FROZEN BEVERAGE):

Local Contract award method is: **TOTAL LOWEST BOTTOM LINE PRICE** where award is to the Distributor with the lowest bottom line price from the bidding sheets and as recorded on the **Official Distributor Bid Tabulation Sheet and verified by the School District**

10.0 IFB - CONTRACT DEFINITIONS

- 10.1 **ACCURACY OF PRICING:** The accuracy of all unit prices, fixed - fees and statements contained in this bid is the responsibility of the Distributor, and no change or cancellation may be made except as provided in this IFB Contract or it's amendment(s).
- 10.2 **BILL BACKS:** Per **USDA Regulation 210.21**, all manufacturer cash discounts, label allowances, group allowances and promotions shall go to the benefit of the School District. Any documentation pertaining to such discounts, bill backs or allowances, will be provided with the GCPS product audit request.
- 10.3 **BRAND AND GRADE LABELS:** The Distributor shall provide documentation of **Brand and Grade Labels Identification** indicating first, second and third quality Grade Labels associated with private labels that may 3.4be used in this Contract. (Applicable to Distributors bidding LOT 1 and LOT 1A) (**ATTACHMENT A**)
- 10.4 **BUY AMERICAN (BA) CERTIFICATION FOR THE GCPS –** Certification of the BA is required to be provided for all Distributor bid food product specifications to meet USDA Buy American requirement.by June 1 of each year for products bid that are not a pre-approved brand (private label and other) and any changes to such products to be delivered. Certifies the ingredients in the products were both processed in the U.S. and contain over 51% of its agricultural food component, by weight or volume, from the U.S.
- 10.5 **CATCH WEIGHT PRICING** (per pound): Selected Turkey and Pork products in LOT 1 are priced per pound. Distributors will provide the Unit Price for the average Pack as provided. The price per pound goes in the BLUE highlighted cell under Pack. This will provide an average case price as well as give the CND the price per pound for catch weight.
- 10.6 **COMBINED PRODUCT USAGE ESTIMATE** is a guide for Manufacturers and Distributors as to the potential product usage of the combined GCPS school districts by Distributor, but under no circumstances guarantees GCPS product usage. Combined usage, including product substitutes is provided to the GCPS Consultant upon request annually and at designated times. Product Usage, by line item and Distributor House is shown on the DRAFT Distributor Bid each year.
- 10.7 **COMMUNICATION:** The awarded Distributor shall communicate continuously via electronic messaging with the School District customer concerning product orders, product movement levels, substitutions, inventory, manufacturer shortages, production issues, etc.
- 10.8 **CUSTOMER ISSUES:** The Distributor will provide prompt response to customer issues regarding product quality, product delivery, and product damage, credits or billing transaction documentation. Failure to resolve customer issues in a timely manner may result in contract termination, or future bid disqualification.
- 10.9 **DISTRIBUTOR OPTION TO DECLINE:** The Distributor awarded the Contract has the option to decline award of other LOT(S) provided the submitted a Bid but was not awarded LOT 1. Bidders of Optional LOT(S) 1A, LOT 2, LOT 3, and LOT 4 AND LOT 6 have the option to decline the award if the bidder deems the number of line items awarded insufficient. Any award declined by a Distributor will be awarded to the qualified Distributor with next lowest price. If the first Distributor awarded the Contract chooses to decline the award, **the Distributor is required to provide a written request of relief to the School District within five (5) working days after the Preliminary Bid Award Letter is received from the School District.**
- 10.10 **DISTRIBUTOR FACILITIES:** The warehouse facilities and delivery vehicles shall be clean, be free of insects and rodents, and meet all federal and state regulations for storing and delivery of dry, chilled, and frozen food products.

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- 10.11 **HACCP:** All Distributors submitting bids must provide a current **Hazard Analysis Critical Control Point Summary (HACCP)** describing the Distributors on – site food sanitation and safety practices meeting federal regulation. The awarded bidder must maintain a current HACCP plan through the duration of this contract. **ATTACHMENT B**
- 10.12 **MANUFACTURER PRICING COMMITMENT TO GCPS:** Bid pricing within this Agreement is provided by the manufacturer for exclusive use by the GCPS based on volume purchasing and is not transferable.
- 10.13 **MANUFACTURER CONTRACTS OFFERING LOWER PRICES –** If an eligible public agency contract, within the state of NC, or a Distributor volume bracketed pricing contract with an awarded GCPS Distributor, shows a lower price on a product than offered under this Agreement, the manufacturer shall notify GCPS and MATCH that lower pricing under this Agreement. The manufacturer holds a contract (not with GCPS) with lower pricing that is available to a Public Agency within the state of NC.
- 10.14 **MANUFACTURER REBATES AND BILL BACKS -** The regulations at 7 CFR 210.21(t), 220.16(e) and 215.14a(d) require that school food authorities (SCHOOL DISTRICTS) must include in all cost reimbursable contracts, contracts including cost reimbursable provisions and solicitations for such contracts, provisions which limit use of non-profit school foodservice account funds to costs resulting from proper procurements and contracts. Specifically, the regulations require that SCHOOL DISTRICTS may use nonprofit school food service account funds to pay only for allowable costs - those costs net of all applicable discounts, rebates and other applicable credits. The regulations at, 7 CFR 200, Office of Management and Budget Guidance, 7 CFR 210.21(c) (i), 215.14a(c) and 220.16 (c) ensure that School Food Authorities receive the full benefit of any applicable discounts, rebates or credits intended specifically for the School Districts by manufacturers, suppliers and/or redistributors arising from purchases made under this IFB (hereinafter “Applicable Discounts, Rebates or Credits”). Distributor may receive and retain earned income, defined as income and profit earned by the distributor for work or services performed by the distributor and/or consistent with industry standards. Some examples of earned income include but are not limited to, freight management, procurement leverage, consolidated warehousing, quality assurance, performance-based product marketing, and management of competitive conditions. The total bid price is not adjusted for earned income.
- 10.15 **MINIMUM SHIPMENTS:** The awarded Distributor must provide bid product brands/codes requested by the School District from the current **GCPS Local Bid**, provided the School District GCPS customer(s) meet(s) manufacturer minimum shipment requirements to the Distributor.
- 10.16 **NON – DOMESTIC FOODS:** Any non-domestic product (non - manufactured in the U.S. and containing less than 51% U.S. ingredients) delivered to the School District, without the prior, written approval of the Child Nutrition Director, or designee, shall be rejected at the delivery point. However, if an unapproved, non – domestic product is delivered to the School District and not rejected, the Distributor shall be held responsible for any over-claims that may result from failure to meet the School District’s required meal pattern. Note: If not rejected at delivery, the Distributor’s return policy becomes effective for credit. Agricultural products which are grown, canned or packed outside of the United States may be accepted by the school district (in writing) with proof from manufacturer that poor Market conditions exist (weather, and/or supply availability of market); this requirement applies to both pre-approved and “private labels”.
- 10.17 **ON – SITE INSPECTIONS:** GCPS reserves the right to request of the Distributor documentation, on-site inspections of facilities, delivery vehicles and records at any time during the Contract period.
- 10.18 **PRIVATE LABEL PRODUCT SPECIFICATIONS:** Provide the School District **private label** product specification documentation **bid directly by the Distributor** including nutritional analysis, ingredients, allergens and country of origin information for **prior to June 1** of the contract year. This data must be provided in digital format separately for each product. Private label substitutions or changes must be provided to customers in advance. Manufacturer signed Buy American documentation for private label products in required as of January 2018. The manufacturer may provide a letter or use the Buy American Certification provided.

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- 10.19 **PRODUCT RECALL:** The Distributor awarded the Contract shall be expected to voluntarily comply with all Federal, State and local mandates regarding the **Identification and Recall** of foods from the commercial and consumer marketplace. The Distributor shall have a process in place to immediately respond to a manufacturer food recall; the process must include accurate and timely communications to the School District and GCPS and assurance that unsafe products are identified and removed from school sites in an expedient, effective and efficient manner. The Distributor is responsible for any consequences arising from the failure to make immediate notification. A one-page summary of the **Distributor's Food Recall Policy/Procedures** is required to be submitted with the Bid in **ATTACHMENT E**.
- 10.20 **PROTEST PROCEDURE:** Protests by the Distributor must be submitted in writing, with supporting documentation, to the issuing School District or Co-Op within **five working days** after bid award. Protests should be made to the School District with a copy of the protest letter is to be provided to the GCPS Consultant: strongm@gcs.k12.nc.us
- 10.21 **QUALITY CONTROL AND ASSURANCE:** It is the responsibility of the School District and awarded Distributor to collaborate on solving local problematic order, delivery and product issues.
- 10.22 **SUB-CONTRACTING:** The awarded Distributor will deliver all item(s) to the School District at the proposed price, in accordance with the item specifications and the terms and conditions contained in this IFB/Contract. **Sub-contracting of this Contract is not permitted** for any reason without the prior written permission of the School District.
- 10.23 **VALUE ADDED OPTIONS AND SERVICES:** Value Added Options and Services including, but not limited to product merchandisers and other purchasing incentives will not be considered as a factor in evaluating the award of this Bid.

11.0 PRODUCT QUALITY, PRODUCT SPECIFICATIONS AND RECOURSE FOR MISREPRESENTATION

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

12.0 ESTIMATED QUANTITIES AND DISTRICT INFORMATION AFFECTING PURCHASES

- 12.1 Quantities reflected in this IFB are estimates based on the combined projected needs of the School District during the Contract period. These quantities are the best estimate of anticipated needs available at the time of publication of this IFB, but the accuracy of this estimate may be affected by numerous factors including but not limited to, budgetary adjustments, product pricing, availability of Federal funds or other subsidies, changing market forces, or unintentional errors or omissions. Actual needs may be greater or less than the estimated quantities provided.

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

- 13.1 **TIE BID:** In the event of a tie on a Bid LOT or line item, the deadlock will be decided in the following order:
- Documented evidence of unresolved service issues with a Distributor.
 - Distributor is certified as Small Business/Minority Business/Women Owned Business.
 - All else being equal, by coin toss by the School District with tie Distributor present.
- 13.2 **REJECTION:** The School District reserves the right to reject any, and all Bids, or any parts thereof, and request resubmission of bids from all distributors as deemed in the best interest of the School District.
- 13.3 **BID ERROR:** In the event of an error in a product specification or pricing, that item will be **excluded** from the tabulation. Any item excluded from the bid tabulation will be excluded for ALL bidders for evaluation purposes only. Multiple bid errors may be rationale for a Distributor's bid disqualification.
- 13.4 **PIGGYBACK CLAUSE:** The Piggyback Clause is a Legal Provision that may be employed by a local School district in the circumstance of no bids received or all bids received are disqualified. If employed, documented Distributor Agreement, Legal Advertisement of Waiver for Competitive Bidding and Local Board Approval by both Districts is required. Pursuant to **G. S. 143-139 (g)**, when a Local Board of Education (BOE) determines it is in the best interest of the member district over which it has authority, the requirement for competitive bidding may be waived for the purchase of food and supplies contained herein, including all subsequent Amendments, to allow the member district to purchase from the bid/contract with any other member district within the GCPS. The member district's BOE, having approved the waiver for competitive bidding, may enter into a new and separate contract with a Distributor who has contracted with another member district provided the member district's BOE is in agreement and the Distributor is willing to extend the same or more favorable prices, terms and conditions to the member district for which competitive bidding has been waived.

14.0 PRELIMINARY DISTRIBUTOR BID AWARD

- 14.1 **LOT Awards are considered "PRELIMINARY" until the following is completed:**
- 14.1.1 The School District reviews the line-by-line prices for accuracy of additions and extensions, brands, and compliance with all instructions to ascertain that the offer is made in accordance with the terms and conditions of the IFB. School officials who find error(s) in calculations will adjust and correct and notify bidders individually. The corrected bottom line calculations will be shown in the **Preliminary Award letter** sent to all bidders.
- 14.1.2 The GCPS Audit Committee will provide the Child Nutrition Director a **Pre-Award Audit Approval** of selected items that have been audited BEFORE the Bid may be finalized for Local Board of Education approval.

15.0 SUBSTITUTION AND DISCONTINUED PRODUCT REQUIREMENTS

- 15.1 The Distributor awarded the Contract shall order goods from manufacturers in economical quantities and maintain inventories at a sufficient level to prevent out of stock situations while avoiding excessive inventories which may be counter-productive to efficiency. Product substitutions due to out of stock situations should be held to an absolute minimum. Distributor "out of stock" percentage is expected at 3% of invoice orders or less. Excessive substitution due to Distributor order errors may jeopardize future business from the School District or invoke Termination Proceedings.
- 15.2 Any Distributor substitution that is not pre-approved approved, in advance, in writing by the Child Nutrition Director or her/his designee, will be rejected by the School District. The School District will not be responsible to purchase quantity of School District estimated usage affected by Distributor substitution.
- 15.3 To facilitate delivery schedules and provide appropriate substitutions in out - of stock situations for accommodation of students with food allergies, the awarded distributor MUST e-mail or fax the school district, for pre-approval by the CND, current specification sheets with ingredient lists, nutritional analysis

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and allergens for each proposed substitution a minimum of **24 HOURS IN ADVANCE** of the delivery. The Distributor may substitute pre-approved brands within a specification without supplying product specifications, but 24 HOURS ADVANCE notification of substitution is still required. The Distributor and/or manufacturer are responsible for any damages to customers due to unidentified allergens from products substituted for brands pre-approved by this Contract.

- 15.4 Any substitution for a bid specification product brought in by the Distributor to alleviate **distributor out of stock** situations, due to buyer or other distributor error, must be (1) of the same or higher quality as the regular stock, (2) the same or lower portion cost than regular stock and (3) priced at the same flat fixed-rate fee per case as the original product. The invoiced price for a substituted product is to be adjusted to the **current bid price at delivery** to avoid incorrect billing. Substituted products are approved by the School District.
- 15.5 Any substitution for a bid specification brought in by the Distributor to alleviate a **manufacturer out of stock**, or discontinued production, must be approved in advance by the School District and (1) of the same or higher quality as the regular stock, (2) the same or similar cost as the regular stock and (3) priced at the same flat fixed-rate fee per case as the original product
- 15.6 The fact that a **substitute is being made shall be clearly stated on the invoice** or provided on a separate invoice. If a School District employee signs the invoice for a non-approved product, it may be refused and picked up within seven (7) days by the Distributor. Frozen products are not included in this provision and the School District and Distributor must discuss/agree on the policy regarding non-approved frozen food return in regard to Distributor's HACCP policy.
- 15.7 Any substitution of a Non-Domestic product for a domestic product, originally a part of the IFB must be approved in advance, in writing, by the Child Nutrition Director, with the Country of Origin information, prior to the delivery of the product to the School District.
- 15.8 If a substitute product is not approved by the Child Nutrition Director, or designee, the School District shall, in good faith and in its sole discretion, purchase a product of equal or greater quality from another source. The Distributor shall be responsible and liable for the difference in the cost between the amount paid for the substituted product and the amount, which would have been paid, had the product been delivered. The Distributor shall have no basis to complain that a substituted product purchased could have been purchased at a lower price and the difference in cost (with documentation) will be subtracted from the amount due the Distributor.
- 15.9 If a pre-approved bid product on the GCPS bid sheet is discontinued by the manufacturer, the Distributor shall immediately notify the GCPS Board of Directors to recommend a replacement product. If the bid specification has other pre-approved brands, the Distributor shall price the remaining pre-approved brands on the bid line and offer the best pricing. If there are other pre-approved brands or the item is Private Label, the Distributor shall shop the market and offer a product is of the same quality and cost as possible. It is the decision of the local School District to accept or decline a replacement product. The Distributor must notify the School District stornqm@gcs.k12.nc.us whenever knowledge of a product being discontinued is known for the appropriate action on GCPS bidding sheets may be taken.

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

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

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16.2 MID - TERM ECONOMIC PRICE ADJUSTMENT

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

16.2.2 **MID - TERM AUDIT REQUIREMENT:** GCPS will collect the required documentation, review and resolve issues and notify Distributors and the School District members of Audit Results, and any audited price changes, by January 10 each year. School Districts are to provide written notification to their Distributor of approval or disapproval of the Mid – Term Price Increase changes before February 1 of each year.

CONDITIONS OF THE MID – TERM AUDIT INCLUDE:

- Due to frequent use of local Distributors, the School District CN Director, or designee, may conduct the Mid-Term Audit of selected awarded items in LOT 4 and OPTIONAL LOT 1A when from the awarded Distributor other than the Distributor awarded LOT 1.
- The audit is conducted as a means of determining and verifying product cost changes to the Distributor from the manufacturer.

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

16.3.1 A signed manufacturer Price Confirmation is acceptable for bid pricing received, but not yet purchased. Pricing must be on source manufacturer letterhead with official signature and dated no more than 60 calendar days prior to the bid opening or renewal date and note the pricing as specifically for GCPS.

16.3.2 Actual manufacturer's invoices on manufacturer's letterhead, Freight bills,

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

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

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

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

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

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

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

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

17.0 TRANSMITTAL OF DELIVERY ORDERS

- 17.1 Orders will be submitted to the Distributor awarded the Contract by the School District on a schedule and by a method that is mutually agreeable to both parties. The School District prefers the shortest lead time possible in order to minimize inventory levels at schools. Order requirements not covered in this section should be listed in Special Conditions.
- 17.2 Orders may be transmitted electronically or by fax as mutually agreed upon by the Distributor awarded the Contract and the School District. Order guides (pre-printed) shall be furnished by the Distributor for recording and/or transmitting orders. If Internet-based, electronic ordering systems are used, the Distributor will provide training on use of their ordering system to necessary School District personnel. The Distributor must block non-bid items from electronic ordering systems available to the School District.
- 17.3 The Distributor awarded the Contract shall provide a representative to screen orders, discuss orders with the Child Nutrition Director, or designee, **on a weekly basis**; the representative shall ensure compliance with scheduled delivery, discuss substitutions and shortages, facilitate approval of substitutions, finalize orders for delivery, and screen delivered orders for shortages, errors, and pricing mistakes.

18.0 BILLING AND PAYMENT REQUIREMENTS

- 18.1 **Payment will be due to the Distributor awarded the Contract within thirty (30) days of date of the invoice, or more frequently, as designated by the School District in Special Conditions.**
- 18.2 The Distributor awarded the Contract shall provide each School District separate invoices and statements for milk.
- 18.3 **The Distributor awarded the Contract shall issue credit memorandums for returned/picked up items within ten (10) working days from the request to do so. Failure to issue credit memorandums in a timely basis shall constitute grounds for withholding payments.**

19.0 SITE DELIVERIES

- 19.1 Deliveries shall be made to schools on a regular schedule between hours that are mutually agreed upon by the Child Nutrition Director and Distributor in a meeting after award of the Contract. Any deviation of the Distributor from the schedule will require notification of the Child Nutrition Director, or designee.
- 19.2 Only two (2) Distributor delivery per school site per week is anticipated, but the School District reserves the right to require more/less than one delivery per week, as needed and volume requires. Known need for deliveries of more/less than one per school site per week shall be indicated within **Special Conditions**. Small school districts will make efforts to work with the Distributor on reduced delivery schedules, but are under no obligation to accept less than two deliveries per school site per week.

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- 19.3 Delivery schedules shall be submitted by the Distributor to the Child Nutrition Director for approval a minimum of two (2) weeks prior to the first delivery and remain constant from week to week. To the degree possible, delivery routes should feature dedicated trucks that deliver in sequence to district schools on a predictable time – table. Conflicts with arrival and departure of students may require Distributor changing delivery routes for safety concerns.
- 19.4 The Distributor shall be notified by the School District in advance of holidays, student vacation and teacher work days so that arrangements can be made for deliveries as approved by the Child Nutrition Director. The School District shall provide the Distributor the school calendar. The School District will make efforts to provide advance notification to the Distributor in the event of weather related closings.
- 19.5 Each Distributor delivery must be made in a single vehicle which will adequately protect frozen, dry, or chilled products in accordance with manufacturers/packers recommendations. Types of delivery vehicles used may be impacted by school sites and should be acquainted with facilities. All frozen food must be delivered in a completely hard frozen state. Items showing thaw or deterioration in any form at the time of delivery will not be accepted. Any item delivered in other than proper condition will not be accepted.
- 19.6 Distributor drivers must deliver products into pantry, freezer or cooler rooms as designated by the unit manager. Drivers are not required to stow products on shelves, nor remove containers from master cases.
- 19.7 If a product is omitted from an order by the Distributor, or is delivered in unacceptable condition (defrosted frozen product or damaged containers, for example) replacement delivery must be made within 24 hours, longer with District permission, with no minimum shipment requirement to each site.
- 19.8 Distributor drivers and helpers shall request the authorized school cafeteria manager, or the approved designee, to verify the accuracy of quantities of each item, brand and code numbers of each items and condition of merchandise from a delivery ticket. A designated school receiver shall sign each delivery ticket. Variations from the norm i.e., shortages, damages, etc., shall be noted on each ticket by the designated school receiver and initialed by both the truck driver and school receiver. The Distributor shall not be required to issue credits for errors not detected at time of delivery, except for hidden damage or failure to meet specification.
- 19.9 Cartons must be marked with appropriate product identifying information as indicated on the Purchase Order and packaged in containers that are new, appropriately designed for the products, and sturdy enough to protect the products in the loading, transit, unloading, and storage process.

20.0 WAREHOUSING REQUIREMENTS

- 20.1 The Distributor awarded the Contract is responsible for the proper warehousing of all products prior to delivery to the School District. Products must be held at the proper temperatures and humidified as recommended by packers or manufacturers, so as to maintain the products and packages at optimum levels of quality and condition. The Distributor shall be liable for the safety and appearance of products and packaging materials. Any products or packages received that are out of condition, as per HACCP guidelines, or not hard frozen in the case of frozen products, will be returned for full credit.

21.0 OPTION FOR CONTRACT RENEWAL AND PROCEDURES

- 21.1 Unless this Contract is renewed beyond the expiration of the Contract as stated on the Bid Certification and Agreement, this Contract shall terminate July 31 of each contract year. The School District reserves the right to seek agreement of the Distributor to renew the Flat Fixed Fees or the Firm Price (LOT 6 only) of the original bid award for a period not to exceed four (4) additional terms of one (1) year each at the same or lower rate.
- 21.2 **RENEWAL OF FLAT FIXED FEES AND SPECIAL CONDITIONS: The School District reserves the right to renew the Distributor Fixed Fee(s) as stated on the original bid Official New Distributor Bid Tabulation Page. Renewal can be requested each year for a period not to exceed four (4) additional**

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(1) year terms, after the original bid year, with mutual agreement of the School District and the Distributor concerning the following:

- 21.2.1 The same, or lower, distributor fixed fees may be renewed for Milk Bids & LOTS 1, 2, 4, 6* and if requested, LOT 1A. The school district may negotiate a lower fixed fee with the distributor for a renewal.
- 21.2.2 The only accepted increase in the delivery of a Fixed - Fee will be based on fuel cost only as described in Section 21.0 of the IFB/Contract.
- 21.2.3 No changes that would substantially change the original IFB/Contract agreement or Special Conditions of that agreement may be extended in a bid renewal year.

22.0 BID RENEWAL PROCEDURES

- 22.1 School Districts OR Distributor, in Renewal status, are NOT required to attend the GCPS Annual Bid Opening, but School Districts and Distributors requesting NEW bids are required to attend the Annual Bid Opening.
- 22.2 The verbal Contract Renewal process may be initiated by either the school district or the Distributor in February of each year.
- 22.3 Renewal Documents Required: The Bid Renewal Certification Agreement, Special Conditions Update (must be approved by Distributor, if not, district must re-bid. And, if required, the annual NCDA Donated Foods Storage Contract must be completed, signed and returned to the School District by the Distributor no later than the Official Distributor Bid due date.
- 22.4 The original (first year) bid contract documents all attachments are to be maintained as the ORIGINAL BID AGREEMENT between the Distributor and the School District.
- 22.4 After renewal approval, the School District will return a signed copy of the **Bid Renewal Certification Agreement and Special Conditions Agreement** to the Distributor.
- 22.5 The School District completed Purchase Order to the Distributor is the final approval of the Renewal Agreement.
- 22.6 School Districts in Renewal status will provide Usage Reports (via the new - year bid spreadsheets) to the awarded Distributor at the same time School Districts soliciting NEW bids to provide Distributors sufficient usage data for product contracts and ordering.
- 22.7 Renewing School Districts will receive the Manufacturer New Bid Year Cost Pricing for renewed LOTS via e- mail from their Distributors **the day after bid opening**; however, pricing is subject to change if adjustments are made due to the Pre-Bid Audit by the GCPS Audit Committee.

23.0 FIXED – FEE ADJUSTMENT FOR FUEL PRICE INCREASE

- 23.1 The fixed - fee for fuel price increase may be adjusted mid-contract and at bid renewal. No other criteria may be considered in adjusting the fixed - fee. The Distributor may propose an increase in the flat fixed – fee if the following conditions exist: On the first Monday in November, if the price of fuel exceeds thirty (30) percent of the base fuel price, as established on the date of the initial Bid opening according to the Weekly on Highway Diesel Prices for the Lower Atlantic Region issued by the Energy Information Agency at: <http://tonto.eia.doe.gov/oog/info/wohdp/diesel.asp>
- 23.2 If conditions exceed 30% of the base fuel price, Distributor may submit a written request for a mid-contract adjustment to the fixed - fee; the request must be submitted to the CND of the School District with a copy to Margaret Strong, GCPS School Nutrition Director, within forty – five (45) days of February 1. The request must include justification and market documentation for the increase based on fuel cost.
- 23.3 To propose an increase in the fixed - fee, the Distributor shall: (1) Determine if the base fuel cost (as reflected at the Bid opening) has increased by thirty (30) percent, and if so, (2) Document the increase in the price per gallon over the initial base fuel cost.
- 23.4 The increase in the fixed - fee shall be based on \$.01 per each \$.20 increase in the cost of fuel per gallon. For example, if the base fee established at bid opening is \$2.30 and fuel prices increased by forty – five (45) percent to \$3.33 per gallon on November 1, the \$.01 may be applied per unit as indicated in the Distributor's original Bid.

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- 23.5 The increase in the flat fixed – fee, based on fuel prices, may not exceed \$.03 per unit in a contract period. The increase in the fixed - fee adjustment at mid-Contract will take effect on Feb. 1 of the contract year.
- 23.6 The same conditions for adjusting the fixed - fee shall apply to the Renewal of the Contract. If, on the first Monday in May, the cost of fuel exceeds thirty (30) percent of the base price that was established November 1, the Distributor may propose an increase in the fixed - fee, using the same procedure described in Item 2 of this Section. The adjustment to the fixed - fee shall not exceed \$.03 per unit. If, however, the price of fuel has dropped by thirty (30) percent from the base that was established on November 1, the Distributor shall reduce the fixed - fee accordingly.

24.0 PRODUCT USAGE REPORTS FROM DISTRIBUTOR

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

25.0 RECORDS RETENTION REQUIREMENTS

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

26.0 ASSURANCE OF NON-COLLUSION

- By signing this bid, the Distributor ASSURES that, to the best of his/her knowledge:
- 26.1 Neither the Distributor nor any business entity represented by the Distributor has received compensation for participation in the preparation of the items specifications or the General Terms and Conditions related to this IFB/Contract.
- 26.2 This bid has been arrived at independently and is submitted without collusion with any other , with any competitor or potential competitor, or with any other person or entity to obtain any information or gain any special treatment or favoritism that would in any way limit competition or give an unfair advantage over any other Distributor with respect to this IFB/Contract.
- 26.3 The Distributor has not accepted, offered, conferred or agreed to confer, and will not in the future accept, offer, confer, or agree to confer any benefit or anything of value to any person or entity related to the School District or any of its members in connection with any information or submission related to this bid, any

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- recommendations, decisions, vote or award related to this bid, or the exercise of any influence or discretion concerning the sale, delivery, or performance of any product or served related to this bid,
- 26.4 Neither the Distributor, nor any business entity represented by the bidder, nor anyone acting for such business entity has violated the Federal Antitrust Laws or the antitrust laws of the state of North Carolina with regard to this bid, and this bid has not been knowingly disclosed, and will not be knowingly disclosed to another Distributor, competitor, or potential competitor prior to the opening of bids.
- 26.5 No attempt has been or will be made to induce any other person or entity to submit or to not submit a bid.

27.0 ASSURANCES REGARDING LEGAL AND ETHICAL MATTERS *(revised April 2016)*

- 27.1 By signing this bid, the Distributor assures that: he/she has read and understands all the General Terms and Conditions in this document and agrees to be bound by them, and is authorized to submit bids on behalf of the offering entity, the Distributor has noted any and all relationships that might be conflicts of interest and included such information with his/her bid response, the bid submitted conforms to all item specification, these General Terms and Conditions, and any other instructions, requirements, or schedules outlined or included in this IFB, if this bid is accepted, in whole or in part, the offering entity will furnish any item(s) awarded to them under this IFB to the SCHOOL DISTRICT at the proposed price and in accordance with the item specifications and the terms and conditions contained in this IFB, the offering entity has, or has the ability to obtain, such financial and other resources, including inventories, as may be required to fulfill all the responsibilities associated with this bid.
- 27.2 The offering entity has a high degree of integrity and business ethics, and a satisfactory record of performances, and has not been notified by any local, state or federal agency with competent jurisdiction that its standing in any matters whatsoever would preclude it from participating in this bid, it would in no other way whatsoever be disqualified to propose or receive any award or contract related to this bid, and the Distributor will comply with any reasonable request from the SCHOOL DISTRICT to supply any information sufficient to substantiate the proposing entity's ability to meet these minimum standards, concerning paragraph (6) above, the offering entity has identified and disclosed in this written bid any and all known suspected matters that would disqualify it from participating in this bid or receiving any award or contract related to this bid, recognizing that the offer's failure to identify and disclose any such matters constitutes its affirmation that no such matters exist, and that failure to disclose in this bid any such matters which do exist is a material breach of contract which would void the submitted bid or any resulting contracts, and subject the offeror to removal from all procurement lists and possible criminal prosecution the offering entity has obtained, and will continue to maintain during the entire term of this contract, all permits, approvals or licenses necessary for lawful performance of its obligations under this contract, the prices, prompt payment discount terms, delivery terms, distribution allowances, and the quality and/or performance of the products offered in the bid will be competitive with those offered to a similarly situated customers in North Carolina. A similarly situated customer means a customer purchasing a similar or lower volume of products and subject to similar material terms and conditions, including similar service and delivery requirements, contract duration, payment terms, geographical distribution, allowances, business mix and total sales, as analogous to the potential relationship contemplated between distributor and GCPS members."
- 27.3 The offering entity will comply with all laws relating to intellectual property, will not infringe on any third party's intellectual property rights, and will indemnify, defend and hold the SCHOOL DISTRICT and its members harmless against any claims for infringement of any copyrights, patents, or other infringements related to its activities under this contract. The offering entity will maintain, at the offering entity's expense, any insurance necessary to protect the SCHOOL DISTRICT and its members from all claims for bodily injury, death, or property damage that might arise from the performance by the offering entity or the offering entity's employees or its agents or any service required of the offering entity under this contract; however, the existence of such insurance will not relieve the offering entity of full responsibility and liability for damages, injury, death or loss as described or as otherwise provided for by law, neither the SCHOOL DISTRICT nor any of its members shall be liable to the offering entity for any damages (including, but not limited to, loss of profits or loss of business, or any special, consequential, exemplary, or incidental damages) in the event that the SCHOOL DISTRICT declares the offering entity in default, he/she understands that by signing the bid with any false statement is a material breach of the contract which will

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void the submitted bid or any resulting contract(s), and subject the bidder to removal from all procurement lists, and possible criminal prosecution, Distributors must comply with the State of North Carolina Conflict of Interest requirement as defined in General Statutes, Chapter 14-234.

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

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

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

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

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29.0 FORCE MAJEURE PROCEDURES

- 29.1 The party seeking relief due to Force Majeure will be required to promptly notify and the School District, using the **Force Majeure Request Form**, citing the details of the Force Majeure event, including adequate market documentation, and request the School District approval of the Force Majeure. the School District(s). The Request is to be sent to strongm@gcs.k12.nc.us. If approved, the Distributor will be notified via a signed Force Majeure Request Form which is sent to the School District.
- 29.2 The term Force Majeure shall include, but is not limited to, governmental restraints or decrees, provided they affect all companies in the Distributor's industry equally and are not actions taken solely against the Awarded Distributor, acts of God (except natural phenomena, such as rain, wind or flood, which are normally expected in the locale in which performance is to take place); work stoppages due to labor disputes or strikes; fires; explosions; epidemics; riots; war; rebellion; or sabotage.
- 29.3 The parties to this Contract will be required to use due caution and preventative measures to protect against the effects of Force Majeure, and the burden of proving that Force Majeure has occurred shall rest on the party seeking relief under this section. They will be required to use due diligence to overcome obstacles to performance created by the Force Majeure event, and shall resume performance immediately after the obstacles have been removed, provided the Contract has not been terminated in the interim.
- 29.4 Delay or failure of performance, by either party to this contract, caused solely by the Force Majeure event shall be executed for the period of delay caused solely by the Force Majeure event, provided the affected party has promptly notified the other party in writing. Neither party shall have any claim for damages against the other resulting from delays caused solely by Force Majeure.
- 29.5 The SCHOOL DISTRICT will not be responsible for any costs incurred by the Distributor because of the Force Majeure event unless the SCHOOL DISTRICT has requested, in writing, that the Distributor incur such costs in connection with any delay or work stoppage caused by the Force Majeure, and the SCHOOL DISTRICT has agreed in writing to incur such additional costs.
- 29.6 Notwithstanding any other provision of this section, in the event the Distributor's performance of its obligations under this contract is delayed or stopped by a Force Majeure event, the SCHOOL DISTRICT shall have the option to terminate this contract in accordance with the General Terms and Conditions document entitled "Remedies for Non-Performance of Contract, and Contract Termination." Furthermore, this section shall not be interpreted as to limit or otherwise modify any of the SCHOOL DISTRICT's rights as provided elsewhere in this contract.

30.0 WAIVER

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

31.0 RIGHT TO ASSURANCE

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

32.0 REGULATORY COMPLIANCE

- 32.1 The Distributor and SCHOOL DISTRICT mutually agree to comply with all applicable standards, orders or requirements issued pursuant to Section 306 of the Clean Air Act (42 USC 1857 [h]), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 117389 and Environmental Protection Agency regulations (40 CFR Part 15). Any violations thereof shall be reported to the Administrator for Enforcement or other appropriate authority. Each party shall not be responsible to the other for acts beyond its control or acts caused by the negligence of the other party.
- 32.2 The Distributor agrees to comply with all mandatory standards and policies relating to energy efficiency as cited in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (P.L 165).
- 32.3 The Distributor shall comply with Executive Order 11246, entitled Equal Employment Opportunity, as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations, 41 CFR Part 60.

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- 32.4 The Distributor shall comply with the following civil rights laws as amended: Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title 7 CFR parts 15, 15a, and 15b; the Americans with Disabilities Act; and FNS Instruction 113-6, “Civil Rights Compliance and Enforcement in School Nutrition Programs”.
- 32.5 The Distributor shall comply with the “Buy American” provision for Contracts that involve the purchase of food and/or beverages as per 7 CFR Part 250.
- 32.6 The Distributor shall comply with the provisions of the Consumer Product Safety Act.
- 32.7 The Distributor shall provide notification of **HUB Certification. ATTACHMENT F**
- 32.8 The Distributor shall complete and sign the **Certification of Contracts, Grants, Loans, Cooperative Agreements and Lobbying ATTACHMENT G** and shall include this document as part of the Agreement.
- 32.9 The Distributor shall provide notification of **Debarment, Suspension and Other Responsibility Matters – Primary Covered Transactions ATTACHMENT HI**
- 32.10 The Distributor shall abide by all APPLICABLE State and Federal laws and policies of the State Board of Education when providing services under this Contract.
- 32.11 The North Carolina Department of State Treasurer is providing this letter to Local Government Units to explain new contracting and procurement compliance obligations created by the **Iran Divestment Act of 2015** (N.C.G.S. 143C-6A-1 to 6A-9).^{*} Local Government Units should be aware that effective February 26, 2016, this law imposes new obligations on each new bid process, each new contract, and each renewal or assignment of an existing contract. **ATTACHMENT I** The specific requirements are as follows:
- **Local Government Units must obtain a one-page mandatory certification under the Act.** (See sample “Contract Certification” form for details.)
 - **Local Government Units may not enter into contracts with any entity or individual found on the State Treasurer’s Iran Final Divestment List.** This list will be posted on the Department of State Treasurer’s website on February 26, 2016 and will be updated every 180 days. (See “Contract Restrictions” for details.)

ATTACHMENT J – No Bid Response