

North Carolina Procurement Alliance Invitation for Bid



SMALL EQUIPMENT TERM CONTRACT

General Terms and Conditions

Johnston County Public Schools

Contract Period: May 1, 2025 – August 31, 2025

**Approved by the NCPA Board of Directors
9-13-2023**

USDA NON-DISCRIMINATION STATEMENT

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program complaint of discrimination, complete the [USDA Program Discrimination Complaint Form](#), (AD-3027) found online at: [How to File a Complaint](#), and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:

1. mail: U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410;
2. fax: (202) 690-7442; or
3. email: program.intake@usda.gov.

This institution is an equal opportunity provider.

BID SUBMITTAL INSTRUCTIONS FOR FORMAL INVITATION FOR BID (IFB)

Sealed Bids Subject to Conditions Made a Part Hereof Will Be Received BY MAIL (delivery service of your choice) Until:

INSERT THE DATE AND TIME OF THE BID OPENING

INSERT THE LOCATION AND ADDRESS FOR THE BID OPENING INCLUDING A PHONE NUMBER

REQUIRED HARD COPY PAGES – (Files, referenced here, were attached to the email containing these instructions.)

- **Download and Review** documents sent by School District or Co-op. Some are for your reference only and some must be returned with the RFQ response.
 - ✓ **Rename and save each Document File** by adding Dealer Company Name first and leaving the file description as it appears.
- **Fill in required Dealer information** on pages with **teal highlights**.
- **Enter bid price** on the **Official NCPA Small Equipment Spreadsheet**. Instructions for completing bid **spreadsheet** are included with the bid documents.
- **Save each document** often and as completed.

HARDCOPY DOCUMENTS: Complete and return hardcopies as required below:

- ❖ **Dealer RFQ Checklist:** use as a guide to complete the bid documents, place as top sheet of bid package.
- ❖ **New Bid Certification and Agreement:** Prepare two (2) original forms each completed and signed by Distributor with **original signature in Blue Ink** preferred, but a scanned copy of the form with an original signature of an authorized company official will be accepted. Acknowledgement of Addenda that was sent via email to Dealers, after the issuance of the Official IFB, is to be completed at the bottom of the **New Bid Certification and Agreement** by the bidder. It is assumed bidders received email addenda if dates are not provided.
- ❖ **Official NCPA Small Equipment Spreadsheet:** Return One (1) printed copy with dealer bid pricing and bottom-line total.
 - DO NOT change the PAGE LAYOUT when you print the bid spreadsheet. This document is designed for LETTER and LANDSCAPE printing. Check that ALL columns print on one page! Reviewers must be able to read page.

DIGITAL DOCUMENTS: Name each of the following files as instructed above and save on the Flash Drive.

- PDF Copy of the completed and signed New Bid Certification and Agreement.
- PDF Copies of IFB/Contract Attachment Pages: A–F. Attachment G is returned for “No Bid” only. Complete and sign original forms. Electronic signature will be accepted on the printed attachments.
- One Excel copy (**NOT a PDF**) of the Official NCPA Small Equipment Spreadsheet with your dealer bid pricing and bottom-line total.

Label flash drive with company name and date or place in a labeled envelope.

IMPORTANT – After completing, check the flash drive on another computer to be sure it works!

NCPA SMALL EQUIPMENT INVITATION FOR BID – GENERAL TERMS AND CONDITIONS

Label the outside of the **SEALED BID ENVELOPE** containing both the **REQUIRED HARD COPIES** and **DIGITAL** documents as shown below:

- **DEALER COMPANY NAME**
- **XXXX SCHOOL DISTRICT NAME – SMALL EQUIPMENT BID #XXXXX**

PLACE THE SEALED BID ENVELOPE INSIDE OF A MAILER ENVELOPE ADDRESSED TO:

Johnston County Public Schools
ATTN: Jennifer Lawson
601-C West Market Street
Smithfield, NC 27577

Include an EMERGENCY ONLY Email address on the outside Return Address Label of the bid package. This email will be used as the contact in the event of a weather emergency or other circumstance requiring re-scheduling the bid opening.

NCPA SMALL EQUIPMENT INVITATION FOR BID – GENERAL TERMS AND CONDITIONS

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23. REMEDIES FOR DEALER NON-PERFORMANCE OF CONTRACT, AND TERMINATION OF CONTRACT
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DEALER REQUIRED ATTACHMENTS FOR NEW BIDS

ATTACHMENT A – EVIDENCE OF REQUIRED INSURANCE

ATTACHMENT B – LUNSFORD ACT COMPLIANCE

ATTACHMENT C – RECALL POLICY/PROCEDURES

ATTACHMENT D – HUB CERTIFICATION

ATTACHMENT E – CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, LOBBYING AND COOPERATIVE AGREEMENTS

ATTACHMENT F – CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS – PRIMARY COVERED TRANSACTIONS

ATTACHMENT G – NO BID RESPONSE

ADDITIONAL LOCAL BID ATTACHMENTS:

- SCHOOL DISTRICT PROFILE AND CALENDAR
- SCHOOL DISTRICT SPECIAL CONDITIONS (OPTIONAL)

1.0 NCPA LEGAL AFFILIATION, MISSION, GOAL AND FEDERAL COMPLIANCE

- 1.1 **LEGAL AFFILIATION:** NCPA membership does not constitute a **LEGAL AFFILIATION**; it serves as a means for consolidation of bid products for mutual benefit of the member School Districts and Dealers in the procurement of high-quality small equipment for feeding students at the most reasonable cost.
- 1.2 **MISSION:** This School District is a voluntary participant in the **North Carolina Child Nutrition Procurement Alliance** and joins **100+ member School Districts** in the **MISSION** to procure high quality, reasonably priced products and services for federally funded Child Nutrition programs operating in North Carolina.
- 1.3 **GOAL:** The **GOAL** of the NCPA is to work together to consolidate bid products which will provide benefits that are measurable, cost - effective, and ethically applied. Estimated quantities are not a guarantee of usage and the School District is not required to purchase product(s).
- 1.4 **FEDERAL COMPLIANCE:** The School Nutrition Programs receiving goods and services under this Contract are federally funded programs operated under the authority of the **United States Department of Agriculture (USDA)**. This bid 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 Principles, A -102 Administrative Requirements, and A -133 Audit Requirements.

2.0 SCHOOL DISTRICT-CONTRACT DECLARATIONS

Johnston County Public 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 **Dealer**, defined as a company that is offering to provide the services of ordering, warehousing and delivery of small equipment for use in the School District's School Nutrition Program. **School District** may refer to a single school district, or a combined group of School Districts in a named Co-Op group.

The School District:

- reserves the right, at any time after opening and prior to award, to request from any Dealer clarification of processes or procedures, address technical questions, items bid, or to seek other information regarding the Dealer's bid offer. This process may be used for such purposes as providing an opportunity for the Dealer to clarify their bid, to assure mutual understanding and/or aid in determinations of responsiveness, or the responsibility of the Dealer.
- reserves the right to reject any or all bids, or parts thereof, and to waive informalities and/or irregularities thereof.
- reserves the right to retain all Bids for a period of sixty (60) days or until approval by the Local Board of Education, whichever comes first. The submittal of a Bid shall constitute an irrevocable Offer to Contract with the School District. In accordance with the terms of the Contract, the offer may not be withdrawn until or unless rejected or not accepted by the School District.
- requires this Contract and all attachments and addenda hereto awarded to become the Contract between the School District and the awarded Dealer.
- reserves the right to add written **SPECIAL CONDITION(s)** to this bid which details conditions that are specific to the School District. **Special Condition(s) shall be titled as such and attached to the bid in the Attachments Section.** Special Conditions established by the School District as part of this bid, and the Dealer'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 School District may not make changes that would substantially change the terms of the original agreement in a renewal. Special Conditions must be reviewed and agreed upon by the School District and potential Dealers **PRIOR to the Bid Due Date**. If changes are made to the Special Conditions, the School District must issue a Local Amendment to all potential Dealers announcing the change a minimum of seven (7) working days prior to the bid due date.
- requires the Dealer awarded the Contract be fully acquainted with General Terms and Conditions relating to the scope and restrictions involved in the execution of the work described in this contract for the School District. Failure or omission of the Dealer 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.

NCPA SMALL EQUIPMENT INVITATION FOR BID – GENERAL TERMS AND CONDITIONS

- requires the School District to issue the approved and appropriately signed **Official Bid Certification Form** to the Awarded Dealer and the issue of a local **Purchase Order** to the Dealer as the **Final Bid Award**.

3.0 GENERAL CONTRACT PROVISIONS

- 3.1 **CONTRACT TYPE: FIRM COST - TERM CONTRACT BID:** The **firm cost** for each bid item is the manufacturer's cost, plus freight, to the Dealer and **shall also encompass the costs of the product's receipt into storage, distribution, financing and profit, production losses, analyses cost, waste, labor, repackaging, overhead, transportation costs and ALL other costs of doing business for the line item.**
- 3.2 **QUANTITIES reflected in this bid are estimates** based on the needs of the School District during the Contract term. These quantities are the best estimate of anticipated needs available at the time of publication of this bid, 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.
- 3.3 **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 Dealer to notify **Jennifer Lawson, jenniferlawson@johnston.k12.nc.us / 919-934-1304 ext 7028** no more than **five (5) working days** after the date the bid 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.
- 3.4 **DEALER CHANGES TO PRE-APPROVED MANUFACTURER BRAND/CODE:** All product brands and codes listed on the bid sheets are pre-approved and no products may be added to the bid spreadsheet without prior approval of the NCPA Board of Directors, with appropriate addenda released to eligible Dealers. See 3.6 for product pre-approval process.
- 3.5 **ADVERTISEMENT OF BID:** North Carolina GS143-129 requires advertisement of the bid by the School District in the legal notice section of the **North Carolina Electronic Vendor Portal** a minimum of 7 full days between the date the notice appears and the date of the bid opening.
- 3.6 **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 Dealer known to have received the initial bid. Addenda may be issued from the local School District, within seven (7) calendar days prior to the bid opening date. However, before submitting a bid, it shall be the responsibility of each Dealer to determine whether additional addenda were issued. **INQUIRIES** concerning interpretation or additional clarification or additional information pertaining to this bid must be made in writing (electronic email accepted) on behalf of the School District within nine (9) calendar days prior to the bid opening date. For inquiries notify the School District contact: **Jennifer Lawson at jenniferlawson@johnston.k12.nc.us**
- 3.7 **PRE-APPROVAL OF PRODUCT PROCESS:** The NCPA-Board of Directors solicited member School Districts and Dealers prior to finalizing the attached bid spreadsheet to acquire manufacturer brand/code matching line-item bid specification. Dealers will be notified as to the process for requesting additional brands/codes to existing line-items and issuing requests for new line-items, if required. The NCPA Board of Directors has final approval of all products added to the bid, with the exception of the five (5) Additional Items that the School District may add.
- 3.8 **PRODUCT REMOVAL:** The NCPA reserves the right to remove a pre-approved product from the bid at any time for cause. Removal may occur for the following reasons:
- (1) product quality complaints documented by NCPA member districts
 - (2) manufacturer or supplier failure to deliver product in a timely manner, or in a sufficient quantity to meet NCPA member district needs
 - (3) manufacturer or supplier default on contract with the School District.

3.9 PRODUCT GUARANTEE

3.9.1 The Dealer shall unconditionally guarantee materials and workmanship against patent defects arising from faulty materials, faulty workmanship, or negligence for a period of twelve (12) months, following the final acceptance of the product and shall replace such defective materials or workmanship without cost to the school district.

3.9.2 Where items of equipment or material carry a manufacturer's warranty for any period exceeding twelve (12) months, then the manufacturer's warranty shall apply for that piece of equipment or material. The contractor shall replace such defective equipment or materials, without cost to the owner, within the manufacturer's warranty period.

4.0 DEALER MINIMUM QUALIFICATIONS

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

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

5.0 DEALER INSURANCE REQUIREMENTS

5.1 The Dealer 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 Dealer 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 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 **Executive Director of School Nutrition Services** 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 A** - provide summary and mail certificates to the **school district**.

5.3 **Commercial General Liability** – Dealer shall maintain Commercial General Liability insurance that shall protect the Dealer 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 Dealer 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 Dealer 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 DEALER PERSONNEL REQUIREMENTS

- 6.1 The employment of unauthorized aliens by the Dealer is considered a violation of Section 247A (e) of the Immigration Reform and Control Act of 1986. If the Dealer knowingly employs unauthorized aliens, such a violation shall also be cause for cancellation of the Contract.
- 6.2 **NC LUNS福德 ACT N.C. GENERAL STATUTE 14-208.18:** The Dealer acknowledges that N.C. General Statute 14-208.18 prohibits anyone required to register as a sex offender under Article 27A of Chapter 14 of the General Statutes from knowingly, among other things, being on the premises of any school or within 300 feet of any location intended primarily for the use, care, or supervision of minors, including but not limited to schools, children's museums, child care centers, nurseries and playgrounds. This prohibition applies to persons required to register under Article 27A who have committed any offense in Article 7A of Chapter 14 or any offense where the victim of the offense was under the age of 16 years at the time of the offense. **LUNS福德 ACT** compliance is addressed in the **ATTACHMENT B**.

7.0 BID REQUIREMENTS

- 7.1 **BID ERRORS:** The following two bid errors may result in bid disqualification.

- **NO ORIGINAL SIGNATURE ON THE OFFICIAL DEALER BID CERTIFICATION FORM FOR A NEW OR RENEWAL BID. An Original signature in Blue Ink is preferred.**
- **ANY CHANGE TO NCPA BID CONTRACT LANGUAGE BY THE DEALER**

- 7.2 **TIE BID:** In the event of a bottom-line total tie, the deadlock will be decided in the following order:
- Documented evidence of unresolved service issues with a Dealer.
 - Dealer is certified as Small Business/Minority Business/Women Owned Business.
 - All else being equal, by coin toss with a minimum of two School District Representatives present. All present, will witness and document by signature, the results of the coin toss.

- 7.3 **REJECTION:** The School District reserves the right to reject any, and all Bids, or any parts thereof, and request resubmission of bids from all Dealers as deemed in the best interest of the School District.

- 7.4 **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 Dealer's bid disqualification.

- 7.5 **QUANTITY REQUESTED PRICING – QUANTITY REQUESTED PRICING –** The Dealer shall shop market for the lowest price for the longest lock in period for the **quantity requested**, from the pre-approved brands/codes on the bid spreadsheet in order to reduce costs.

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- 7.6 **SPREADSHEET PRICING DIRECTIONS:** The **INSTRUCTIONS** for completing the **Official NCPA Small Equipment Spreadsheet** are provided with the bid.

- 7.7 **PRICE FOR EACH PRODUCT:** A firm cost price for one (1) pre-approved brand or, if applicable, one (1) private label is requested for each bid specification identified for Dealer pricing in the bid spreadsheet. If **"Packer Brand"** is listed as an approved brand in the bid specification, the **Brand Name, Code and Pack Size of the product bid must be written in under the words Packer Brand**. If a "0" quantity is shown in the Estimated Usage column, the Dealer is **requested** to provide a bid price for the bid specification. All product brands and codes listed on this bid are pre-approved and no products may be added to the bid spreadsheet without prior approval of the NCPA Board of Directors, with appropriate addenda released, to the NCPA member School Districts who will forward the addenda to eligible Dealers to whom they issued bids.

- 7.8 **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 based on the

NCPA SMALL EQUIPMENT INVITATION FOR BID – GENERAL TERMS AND CONDITIONS

following statement: If the bidder discovers or suspects error in the item specification, product code number, pack size, or change in manufacturer formulation, the Dealer shall contact: **Linda Marshburn, NCPA Procurement Consultant** at linda.marshburn@dpi.nc.gov. The NCPA Board of Directors shall make

the final determination of product equivalency and advise member School Districts through an email so that an addendum may be issued to all potential bidders.

- 7.9 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 Dealer NEW bid extensions will be corrected and reported to the affected Dealer(s.) All Dealers will be notified of the corrected bottom line by the School District in the Preliminary Award Letter.

- 8.0 DEALER BID AWARD METHOD: BOTTOM LINE, FIRM PRICE** where award is to the Dealer with the lowest bottom line price from the bidding sheets **as verified by the School District**.

FORMULA FOR THE FIRM PRICE AWARD METHOD:

FIRM UNIT PRICE = The **firm cost** for each bid item is the manufacturer's cost, plus freight, to the Dealer and **shall also encompass the costs of the product's receipt into storage, distribution, financing and profit, production losses, analyses cost, waste, labor, repackaging, overhead, transportation costs and ALL other costs of doing business for the line item.**

TOTAL BY LINE ITEM = FIRM Unit Price X the Estimated School District Usage per Line Item.

TOTAL OF ALL LINE ITEMS = BID BOTTOM LINE .

9.0 CONTRACT DEFINITIONS

- 9.1 ACCURACY OF PRICING:** The accuracy of all fixed unit prices and statements contained in this bid is the responsibility of the Dealer, and no change or cancellation may be made except as provided in this Contract or it's amendment(s).
- 9.2 BACK ORDER:** Products not received per purchase order. Requires approval of District to extend time to receive, or order may be canceled. Back orders 25 lbs. or less may be mailed per trackable mail service.
- 9.3 COMMUNICATION:** The awarded Dealer shall communicate via electronic messaging with the School District customer concerning product orders, substitutions, inventory, manufacturer shortages, production issues, etc.
- 9.4 CUSTOMER ISSUES:** The Dealer will provide prompt response to customer issues regarding 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.
- 9.5 DELIVERY SITES:** Delivery sites may be to individual District Schools, or a District warehouse or as agreed between the Dealer and School District representative. Potential school delivery sites are to be listed in the Special Conditions.
- 9.6 DELIVERY CRITERIA:**
- 9.6.1 **Individual on-site delivery drop requires a minimum of \$100.00 order.** School District shall make efforts to consolidate delivery sites and scheduled dates for delivery. Planned scheduling is recommended, and **to be agreed between the Dealer and the School District** representative PRIOR to the order. Potential alternate delivery options should be listed in the Special Conditions.
- 9.6.2 Scheduled delivery is to be checked in against the Purchase Order and the Delivery Ticket by a School District representative and signed off by the representative. 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 Dealer shall not be required to issue credits for errors not detected at time of delivery, except for hidden damage or failure to meet specifications. (See 16.0 for additional information)

- 9.7 DEALER OPTION TO DECLINE:** Any award declined by a Dealer will be awarded to the qualified Dealer with next lowest price. If the first Dealer awarded the Contract chooses to decline the award, **the Dealer 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.**
- 9.8 DEALER 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.
- 9.9 ON – SITE INSPECTIONS:** NCPA member School Districts reserve the right to request of the Dealer documentation, on-site inspections of facilities, delivery vehicles and records at any time during the Contract period.
- 9.10 PRODUCT RECALL:** The Dealer awarded the Contract shall be expected to voluntarily comply with all Federal, State, and local mandates regarding the **Identification and Recall** of products from the commercial and consumer marketplace. The Dealer shall have a process in place to immediately respond to a manufacturer product recall; the process must include accurate and timely communications to the School District and NCPA and assurance that unsafe products are identified and removed from school sites in an expedient, effective and efficient manner. The Dealer is responsible for any consequences arising from the failure to make immediate notification. A one-page summary of the **Dealer's Recall Policy/Procedures** is required to be submitted with the Bid in **ATTACHMENT C**.
- 9.11 PROTEST PROCEDURE:** Protests by the Dealer must be submitted in writing, with supporting documentation, to the issuing School District or Co-Op within **five (5) working days after bid award**. Protests should be made to the School District with a copy of the protest letter provided to the **NCPA Consultant: leann.seelman@dpi.nc.gov**
- 9.12 PURCHASE ORDER:** The school district will provide an approved Purchase Order per SITE delivery. The Purchase order will show: (1) Brand name of the Item (2) Product code of the item (3) Pack size (4) Price and (5) Quantity ordered.
- 9.13 QUALITY CONTROL AND ASSURANCE COMMITTEE (NCPA)** is the contact for product quality issues affecting multiple NCPA member districts. It is the responsibility of the School District and awarded Dealer to collaborate on solving local problematic order, delivery and product issues.
- 9.14 SUB-CONTRACTING:** The awarded Dealer will deliver all item(s) to the School District at the proposed price, in accordance with the item specifications and the General Terms and Conditions contained in this Contract. **Sub-contracting of this Contract is not permitted** for any reason without the prior written permission of the School District.

10.0 PIGGYBACK CLAUSE

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 Dealer Agreement, Legal Advertisement of Waiver for Competitive Bidding and Local Board Approval by both Districts is required. Pursuant to **G. S. 143-129 (g)**, when a Local Board of Education (BOE) determines it is in the best interest of the member district over which it has authority, the requirement for competitive bidding may be waived for the purchase of small equipment contained herein, including all subsequent Amendments, to allow the member district to purchase from the bid/contract with any other member district within the NCPA. The member district's BOE, having approved the waiver for competitive bidding, may enter into a new and separate contract with a Dealer who has contracted with another member district provided the member district's BOE is in agreement and the Dealer is willing to extend the same or more favorable prices, General Terms and Conditions to the member district for which competitive bidding has been waived.

- 11.0 PRELIMINARY DEALER BID AWARDS are considered "PRELIMINARY" until the following is completed:**
The School District reviews the line-by-line prices for accuracy of additions and extensions, brands, and compliance with all instructions to ascertain that the offer is made in accordance with the General Terms and Conditions of the Contract. 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.

12.0 ADDITIONAL FIVE (5) PRODUCTS

Each School District may add up to a **TOTAL of five (5) Additional Products** at a Fixed Unit Price. These items are exclusive to the School District and are listed in the **Additional Item TAB** of the bid spreadsheet. The product name and specifications for these items shall be added in the Bidding Sheets labeled “**Additional Items**” and numbered 1 – 5 as required. The Additional Products shall be included in the bottom-line bid award.

13.0 SUBSTITUTION AND DISCONTINUED PRODUCT REQUIREMENTS

- 13.1 In the event an awarded product is not available and a substitution from the preapproved brands cannot be offered at the FIRM BID PRICE the substitution and alternate pricing must be approved in advance by the school district.
- 13.2 Any Dealer substitution that is not pre-approved in writing by the School Nutrition Director or her/his designee, will be rejected by the School District. The School District will not be responsible to purchase quantity of School District estimated usage affected by Dealer substitution.
- 13.3 If a pre-approved bid product on the NCPA bid sheet is discontinued by the manufacturer, the Dealer shall immediately notify the NCPA Board of Directors to recommend a replacement product. It is the decision of the local School District to accept or decline a replacement product. The Dealer must notify the NCPA Consultant linda.marshburn@dpi.nc.gov whenever knowledge of a product being discontinued is known so the appropriate action on NCPA bidding sheets may be taken.

14.0 TRANSMITTAL OF DELIVERY ORDERS

- 14.1 Orders will be submitted to the Dealer 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.
- 14.2 Orders may be transmitted as mutually agreed upon by the Dealer awarded the Contract and the School District. If Internet-based, electronic ordering systems are used, the Dealer will provide training on use of their ordering system to necessary School District personnel. The Dealer must block non-bid items from electronic ordering systems available to the School District.
- 14.3 The Dealer awarded the Contract shall provide a representative to screen orders, discuss orders with the School Nutrition Director, or designee, **at time of order**. 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.

15.0 BILLING AND PAYMENT REQUIREMENTS

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

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member School Districts. Orders and billing are a direct relationship between the Dealer and the individual School District receiving the products.

- 15.4** The Dealer awarded the Contract **shall issue credit memorandums** for returned/picked up items within ten (10) working days from the request or on a schedule mutually agreed upon with the School District contact. Failure to issue credit memorandums in a timely manner shall constitute grounds for withholding payments.
- 15.5** It is understood and agreed that all products ordered directly by member districts will be delivered to location(s) designated by the member district at the established contract prices as awarded in this contract and in effect on dates orders are placed. Invoices will be provided by the Dealer within 30 days of the date of purchase. Invoicing at variance with this condition will be subject to correction to the contract price prior to payment being made. Member districts agree to pay invoices within 30 days of receiving a correct invoice. The Dealer may withhold shipments if the member district fails to pay correct invoices on time. Under no circumstances may a Dealer withhold shipment of goods when the failure to pay is the result of the Dealer not providing a correct invoice.

16.0 SITE DELIVERIES

- 16.1** Deliveries shall be made to schools or warehouse on the schedule agreed upon by the School Nutrition Director and Dealer. Any deviation of the Dealer from the agreed schedule will require notification of the School Nutrition Director or designee.
- 16.2** Each Dealer delivery must be made in a single vehicle which will adequately protect products in accordance with manufacturers recommendations. Types of delivery vehicles used may be impacted by school sites and should be acquainted with facilities. Any item delivered in other than proper condition will not be accepted and will be picked up within ten (10) working days from the request or on a schedule mutually agreed upon with the School District contact.
- 16.3** Dealer drivers must deliver products **inside the building in the area** designated by the unit manager or school district. **No dock deliveries or drop-offs allowed.**
- 16.4** Items such as carts, pan racks and any items requiring assembly are to be delivered **fully assembled.**
- 16.5** Dealer drivers and helpers shall request the authorized school cafeteria manager, or the approved designee, to verify the accuracy of quantities of each item, brand and code numbers of each item and condition of merchandise from a delivery ticket. A designated school receiver shall sign each delivery ticket. Variations from the norm i.e., shortages, damages, etc., shall be noted on each ticket by designated school receiver and initialed by both the truck driver and school receiver. The Dealer shall not be required to issue credits for errors not detected at time of delivery, except for hidden damage or failure to meet specifications.
- 16.6** 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.

17.0 WAREHOUSING REQUIREMENTS

The Dealer awarded the Contract is responsible for maintaining the products and packages at optimum level of quality and condition prior to delivery to the School District. The Dealer shall be liable for the safety and appearance of products and packaging materials. Any products or packages received that are out of condition or not operational will be returned for full credit.

18.0 OPTION FOR CONTRACT RENEWAL AND PROCEDURES

18.1 Unless this Contract is renewed beyond the expiration of the Contract as stated on the Bid Certification and Agreement, this Contract shall terminate on the expiration date. The School District reserves the right to seek agreement of the Dealer to renew the Fixed Firm Price 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 price.

18.2 RENEWAL OF FIXED UNIT PRICING AND SPECIAL CONDITIONS: The School District reserves the right to renew the Dealer fixed price per item as stated on the original bid Official New Dealer Bid Tabulation Page. Renewal can be requested each year for a period not to exceed four (4) additional (1) year terms, after the original bid year, with mutual agreement of the School District and the Dealer concerning the following:

18.2.1 The same, or lower Dealer fixed unit price per item may be renewed if requested. The school district may negotiate **lower fixed unit pricing** with the Dealer for a renewal.

18.2.3 No changes that would substantially change the original Contract agreement or Special Conditions of that agreement may be extended in a bid renewal year.

19.0 BID RENEWAL PROCEDURES

19.1 The verbal Contract Renewal process may be initiated by either the school district or the Dealer a minimum of 30 days prior to the termination date of the contract each year.

19.2 Renewal Documents Required: The Bid Renewal Certification Agreement, Special Conditions Update must be approved by Dealer, if not, district must re-bid.

19.3 The original (first year) bid contract documents, addenda and all attachments are to be maintained as the **ORIGINAL BID AGREEMENT** between the Dealer and the School District.

19.4 After renewal approval, the School District will return a signed copy of the Bid Renewal Certification Agreement and Special Conditions Agreement to the Dealer.

19.5 The School District completed Purchase Order to the Dealer is the final approval of the Renewal Agreement.

20.0 RECORDS RETENTION REQUIREMENTS

20.1 By signing this bid, the Dealer 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.

20.2 Additionally, the Dealer must provide all documents as necessary for the independent auditor to conduct the SCHOOL DISTRICT's single audit. The SCHOOL DISTRICT will contract to have the single audit conducted as a regular, direct expense to the SCHOOL DISTRICT; School Nutrition funds may not be used for this purpose.

20.3 The Dealer 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.

21.0 ASSURANCE OF NON-COLLUSION

By signing this bid, the Dealer ASSURES that, to the best of his/her knowledge:

(1) Neither the Dealer nor any business entity represented by the Dealer has received compensation for participation in the preparation of the item specifications or the General Terms and Conditions related to this Contract.

(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

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special treatment or favoritism that would in any way limit competition or give an unfair advantage over any other Dealer with respect to this Contract.

- (3) The Dealer has not accepted, offered, conferred or agreed to confer, and will not in the future accept, offer, confer, or agree to confer any benefit or anything of value to any person or entity related to the School District or any of its members in connection with any information or submission related to this bid, any recommendations, decisions, vote or award related to this bid, or the exercise of any influence or discretion concerning the sale, delivery, or performance of any product or served related to this bid.
- (4) Neither the Dealer, 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 regarding this bid, and this bid has not been knowingly disclosed, and will not be knowingly disclosed to another Dealer, competitor, or potential competitor prior to the opening of bids.
- (5) No attempt has been or will be made to induce any other person or entity to submit or to not submit a bid.

22.0 ASSURANCES REGARDING LEGAL AND ETHICAL MATTERS

22.1 By signing this bid, the Dealer 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 Dealer 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 Contract, if this bid is accepted, in whole or in part, the offering entity will furnish any item(s) awarded to them under this Contract to the SCHOOL DISTRICT at the proposed price and in accordance with the item specifications and the General Terms and Conditions contained in this bid, 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.

22.2 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 Dealer 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 (4, 5 & 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 General Terms and Conditions, including similar service and delivery requirements, contract duration, payment terms, geographical distribution, allowances, business mix and total sales, as analogous to the potential relationship contemplated between Dealer and NCPA members."

22.3 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

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limited to, loss of profits or loss of business, or any special, consequential, exemplary, or incidental damages) in the event that the SCHOOL DISTRICT declares the offering entity in default, he/she understands that by signing the bid with any false statement is a material breach of the contract which will void the submitted bid or any resulting contract(s), and subject the bidder to removal from all procurement lists, and possible criminal prosecution, Dealer s must comply with the State of North Carolina Conflict of Interest requirement as defined in General Statutes, Chapter 14-234.

23.0 REMEDIES FOR DEALER NON-PERFORMANCE OF CONTRACT, AND TERMINATION OF CONTRACT

- 23.1** If the Dealer cannot comply with the General Terms and Conditions in fulfilling its Contract as anticipated, they must supply the same products or services contracted from other sources at the contract price. The Dealer's delay in the above will constitute the Dealer's material breach of contract, whereupon the SCHOOL DISTRICT may terminate the Dealer's contract for cause as provided by the remainder of this section.
- 23.2** 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.
- 23.3** 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.
- 23.4** Except as otherwise provided within the General Terms and Conditions of this document, this Contract may be terminated in whole or in part by either party in the event of substantial failure by the other party to fulfill its obligations under contract through no fault of the terminating party; provided that no such termination may be implemented unless and until the other party is given: 1) at least thirty (30) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and 2) an opportunity for consultation with the terminating party, followed by a reasonable opportunity, of not more than ten (10) working days, to rectify the defects in products or performance, prior to termination. Failure to respond to the written notification of termination to rectify defects within five (5) working days will result in immediate termination of contract.
- 23.5** Notwithstanding anything contained in this section, in the event of documented and persistent breaches of any provisions in this contract by the Dealer, 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 Dealer's failure to adhere to any of the provisions of the General Terms and Conditions of this Contract.
- the Dealer delivering any product(s) that fail to meet the Item Specifications included in this Contract relating to the awarded product(s),
- the Dealer delivering any substitution(s) of product(s) different than those originally proposed and awarded without the prior written approval of the SCHOOL DISTRICT,
- the Dealer's failure to provide timely, accurate billing and credits to the SCHOOL DISTRICT,
- the Dealer's failure to meet the required delivery schedules as identified in the contract documents, or
- In the event the School District terminates this Contract, in whole or in part, for any reason provided for within the contract, the School District reserves the right to award the canceled Contract, or any portion thereof, to the next lowest or most responsible offeror as it deems such award to be in the best interest of the SCHOOL DISTRICT.
- Any Contract termination, or persistent documentation of breach of contract provisions, resulting from any cause other than a Force Majeure event, will be deemed valid reason for not considering any future bid from the defaulting Dealer. In the performance of this contract, time is of the essence and these General Terms and Conditions are of the essence.

24.0 FORCE MAJEURE PROCEDURES

- 24.1** The party seeking relief due to Force Majeure will be required to promptly notify the School District contact in writing, citing the details of the Force Majeure event, including documentation, and request approval of the Force Majeure.
- 24.2** The term Force Majeure shall include, but is not limited to, governmental restraints or decrees, provided they affect all companies in the Dealer's industry equally and are not actions taken solely against the Awarded Dealer; 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; sabotage; or supply chain disruption.
- 24.3** 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.
- 24.4** 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.
- 24.5** The SCHOOL DISTRICT will not be responsible for any costs incurred by the Dealer because of the Force Majeure event unless the SCHOOL DISTRICT has requested, in writing, that the Dealer 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.
- 24.6** Notwithstanding any other provision of this section, in the event the Dealer'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.

25.0 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.

26.0 RIGHT TO ASSURANCE

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

27.0 REGULATORY COMPLIANCE

- 27.1** The Dealer and SCHOOL DISTRICT mutually agree to comply with all applicable standards, orders or requirements issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387) Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- 27.2** The Dealer 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).
- 27.3** The Dealer 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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- 27.4** The Dealer 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 113-1, "Civil Rights Compliance and Enforcement in School Nutrition Programs".
- 27.5** The Dealer shall comply with the "Buy American" provision for Contracts that involve the purchase of food and/or beverages as per 7 CFR Part 250.
- 27.6** The Dealer shall comply with the provisions of the Consumer Product Safety Act.
- 27.7** The Dealer shall provide notification of HUB Certification. ATTACHMENT D
- 27.8** The Dealer shall complete and sign the Certification of Contracts, Grants, Loans, Cooperative Agreements and Lobbying ATTACHMENT E and shall include this document as part of the Agreement.
- 27.9** The Dealer shall provide notification of Debarment, Suspension and Other Responsibility Matters – Primary Covered Transactions ATTACHMENT F.
- 27.10** The Dealer shall abide by all APPLICABLE State and Federal laws and policies of the State Board of Education when providing services under this Contract.
- 27.11** The Dealer shall comply with the provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).
- 27.12** The Dealer shall comply with the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).
- 27.13** The Dealer shall comply with the provisions of the Davis-Byrd Act, as amended
- 27.14** The Dealer shall comply with the provisions of the Rights to Inventions Made Under A Contract or Agreement. <https://www.law.cornell.edu/cfr/text/37/part-401> go to this link for scope and definitions.