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Smithfield, NC 27577
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www.johnston.k12.nc.us

To whom it may concern,

Enclosed is an Invitation for Bid (IFB) for the purchase and delivery of ice cream. Johnston County Public Schools' School Nutrition Program and the school district is seeking to contract the purchase and delivery of ice cream for the new school year 2024-2025. All proposals must be received at the Johnston County Public Schools School Nutrition office located at 601-C West Market Street in Smithfield by **Tuesday, August 21, 2024 at 10:00am**. Proposals may be mailed in as instructed on page 3 of the document. **FAX proposals will not be accepted.** Johnston County Public Schools reserves the right to reject any and all proposals.

Delivery of products shall occur at least once every 2 weeks during operating school months. Delivery must take place between **7:30 AM and 2:30 PM**. Two copies of the invoice are to be signed by the School Nutrition Manager or her/his designee for delivery of products. Any invoice not signed by the designee will not be eligible for payment.

By signing the document enclosed, the vendor certifies that this bid is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a proposal for the same materials, supplies, or equipment, and is in all respects fair and without collusion or fraud. The vendor certifies that collusive proposalding is a violation of Federal law and can result in fines, prison sentences, and civil damage awards. Form AD-1048 (1/92) must be signed and returned with the bid documents.

Should you have any questions, please contact Amanda Jackson via email at amandajackson@johnston.k12.nc.us by **August 14, 2024**. Answers to questions and inquiries will be issued via addendum on **August 15, 2024**. Thank you for your interest in Johnston County Public Schools.

Sincerely,

Jennifer Lawson

Jennifer Lawson
Director of School Nutrition



JOHNSTON COUNTY PUBLIC SCHOOLS

**601-C West Market Street
Smithfield, North Carolina 27577**

ICE CREAM IFB/CONTRACT

IFB#: 200-ICECREAM-2024-2025

Contract Period: October 1, 2024 - June 31, 2025

USDA NON-DISCRIMINATION STATEMENT

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

1. **mail:**
U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410; or
2. **fax:**
(833) 256-1665 or (202) 690-7442; or
3. **email:**
Program.Intake@usda.gov

MAILING INSTRUCTIONS:

Mail only one fully executed bid document signed with **BLUE ink** and one copy of the bid (2 total), in a single envelope. Bid **MUST BE SEALED**. Address envelope and mark "Bid No. 200-ICECREAM-2024-2025 as shown below: It is the responsibility of the bidder to have the bid in this office by the specified time and date of opening.

Bidders or their authorized representatives are expected to fully inform themselves as to the terms, conditions, requirements, and specifications of this IFB before submitting bids. Failure to do so will be at the bidder's own risk. The law makes no allowance for errors or omission or commission on the part of the bidders; furthermore, the bidder cannot secure relief on the plea of error or ignorance concerning any requirement included in the IFB.

Vendors who do not wish to respond to this IFB, but want to remain on our list for future opportunities in this product category, should complete, sign, and return the signature sheet entitled "Bid Certification" with "NO BID" indicated on the face of the form. Failure to adhere to this procedure may result in removal of the bidder's name from our bidder list.

Bidders are welcome to attend the bid opening at the date and time indicated in the Bid Certification, but bidder presence is not required, and no weight or other consideration toward any award decision will be given to any bidder's attendance or absence at the bid opening. Recaps of the details of the bids received will be available to any interested party upon WRITTEN request. The form and content of the bid recaps will be at the sole discretion of JCPS. They may be in electronic form.

BID NO. 200-ICECREAM-2024-2025
Johnston County Public Schools
School Nutrition Services
601-C West Market Street
Smithfield, NC 27577

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1.0 DISTRICT PROFILE, MISSION, AND FEDERAL COMPLIANCE

1.1 DISTRICT PROFILE

Johnston County Public Schools (JCPS) has a student enrollment of more than 37,000 students in grades pre-kindergarten through twelfth grade. Doubling the student population in the past 15 years, Johnston County's growth is due to the excellent education JCPS provides to our students. We enjoy strong community support through funding for new schools, partnerships with business and faith based organizations, and fabulous parental involvement. What are the results of this support? Our graduation rate has climbed by more than 13 percent in the past four years, while our dropout rate has fallen by nearly 50 percent in the same period. We are proud of our 214 Nationally Board Certified teachers. Johnston County Public Schools is accredited by AdvancEd, meaning that our graduates are prepared to be accepted into the finest universities and colleges. Extracurricular activities abound through strong arts and athletics programs. Global is not just a buzz word in our vision statement. Our diverse culture includes over 45 languages spoken by students and their families.

The School Nutrition Services department (hereafter referred to as SNS) serves approximately 20,000 reimbursable lunches and 10,000 reimbursable breakfasts daily to students in 45 schools.

1.2 SCHOOL NUTRITION MISSION

The mission of School Nutrition Services is to serve nutritious and appealing school meals while providing excellent customer service. We follow the strictest food safety practices to ensure that meals are of the highest quality. We believe that nutrition has a direct impact on a student's success. Studies show that children that eat school breakfast and lunch have fewer tardies, higher test scores and fewer behavioral issues.

- 1.3 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 Principles, A -102 Administrative Requirements, and A -133 Audit Requirements.

2.0 GENERAL PROVISIONS OF THIS 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/Vendor to notify Jennifer Lawson, Director of School Nutrition Services, in writing via email, at jenniferlawson@johnston.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 DISTRIBUTOR / VENDOR CHANGES TO PRE-APPROVED MANUFACTURER BRAND/CODE:** All product brands and codes listed on this bid are pre-approved and no products may be added to the bid spreadsheets without prior approval of the school district designee, with appropriate addenda released to eligible Distributor/Vendors.
- 2.3 ADVERTISEMENT OF BID:** A public advertisement is required to solicit bids or proposals for all purchases over the Local Education Agency (LEA) simplified acquisition (or small purchase) threshold of \$90,000. The announcement (advertisement or legal notice) will contain a general description of items to be purchased; specific procedures for submission of a bid or proposal; deadline for submission of sealed bids or proposals, and the address where complete specifications and bid/proposal instructions may be obtained and the contact person to whom questions may be addressed.

An announcement of an Invitation for Bid (IFB) or a Request for Proposal (RFP) will be placed on the IPS website and posted on the School Nutrition website to publicize the intent of the School Food Authority to purchase needed items. The notice of advertisement for bids/proposals will be run in these media outlets for seven (7) days.

- 2.4 A WRITTEN ADDENDUM IS THE ONLY OFFICIAL RESPONSE METHOD WHEREBY INTERPRETATION, CLARIFICATION AND ADDITIONAL INFORMATION REGARDING THIS BID CAN BE GIVEN.** Once issued, all addenda shall become part of this contract. All addenda will be issued electronically to each vendor known to have received the initial IFB/Contract. Addenda may be issued from the school district **no later than five (5) days prior to the IFB/Contract due date.** However, before submitting an IFB/Contract, it shall be the responsibility of each vendor 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 (electronically accepted) on behalf of the school district **no later than six (6) days prior to the IFB/Contract due date.** For inquiries contact Jennifer Lawson, Director of School Nutrition Services, in writing via email, at jenniferlawson@johnston.k12.nc.us.
- 2.5 COST PRICING BY ITEM:** The Distributor/Vendor/Vendor 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.
- 2.6 FIRM COST-PLUS FIXED FEE BID:** This method for calculation of this bid is Firm Cost-Plus Fixed Fee. **The Distributor/Vendor Fixed Fee is charged "per case" and shall encompass the costs of the product's receipt into storage, distribution, financing and profit, production losses, analyses cost, waste, labor, repackaging, overhead, transportation costs and ALL other costs of doing business for the line items.**
- 2.7 PRODUCT REMOVAL:** The school district reserves the right to remove a pre-approved product from the bid at any time for cause. Removal may occur for the following reasons:
- (1) Product was reformulated and no longer meets the specification
 - (2) Product quality complaints documented by member districts
 - (3) Manufacturer or Supplier failure to deliver product in a timely manner, or in a sufficient quantity to meet the school districts needs
 - (4) Manufacturer or supplier default of contract with the school district.
 - (5) Lack of sufficient usage of a line item

3.0 SCHOOL DISTRICT IFB – CONTRACT DECLARATIONS AND PROFILE

Johnston County Public Schools and is hereinafter referred to as the **School District**, is requesting to receive Bids from an Offering Entity hereinafter referred to as the **Distributor/Vendor/Vendor**, defined as a company that is offering to provide the services of ordering, warehousing and delivery of ice cream for use in the School District's School Nutrition Program.

Johnston County Public Schools:

- Reserves the right, at any time after opening and prior to award, to request from any Distributor/Vendor/Vendor clarification of processes or procedures, address technical questions, items bid, or to seek other information regarding the Distributor/Vendor's/Vendor's bid offer. This process may be used for such purposes as providing an opportunity for the Distributor/Vendor/Vendor to clarify their bid, to assure mutual understanding and/or aid in determinations of responsiveness, or responsibility, of the Distributor/Vendor/Vendor.
- Reserves the right to reject any or all bids, or parts thereof, and to waive informalities and/or irregularities thereof.
- Reserves the right to retain all Bids for a period of sixty (60) days or until approval by the Local Board of Education, whichever comes first. The submittal of a Bid shall constitute an irrevocable Offer to Contract with the School District. In accordance with the terms of the IFB/Contract, the offer may not be withdrawn until or unless rejected or not accepted by the School District.
- Requires the IFB/Contract and all attachments and addenda hereto awarded to become the Contract between the School District and the awarded Distributor/Vendor/Vendor.
- Requires the Distributor/Vendor/Vendor awarded the Contract be fully acquainted with General Terms and Conditions relating to the scope and restrictions involved in the execution of the work described in this contract for the School District. Failure or omission of the Distributor/Vendor/Vendor to be familiar with existing

conditions shall in no way relieve the company of obligation with respect to this Contract and may be grounds for disqualification.

- Requires the school district to issue the approved and appropriately signed **Official Certification Form** to the Awarded Distributor/Vendor/Vendor and the issue of a local **Purchase Order** to the Distributor/Vendor/Vendor as the **Final Bid Award**.
- Will provide a School District Profile which includes pertinent information about the district such as the school names, addresses and telephone numbers. The profile is found in the Attachments section of the IFB/Contract.

4.0 DISTRIBUTOR / VENDOR MINIMUM QUALIFICATIONS

Distributor/Vendor/Vendor awarded the Contract must have a minimum of one (1) year of experience in commercial food warehousing/delivery business and must maintain all required state and local business licenses and a Certificate of Authority from the Secretary of State of North Carolina. Distributor/Vendor/Vendor 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 with the General Terms and Conditions of this IFB. The School District reserves the right to make the final determination as to the Distributor/Vendor's ability to provide the products and services requested herein.

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

5.0 DISTRIBUTOR / VENDOR INSURANCE REQUIREMENTS

- 5.1** The Distributor/Vendor/Vendor 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/Vendor/Vendor must provide **Evidence of Insurance** that it currently has, and agrees to purchase and maintain, during its performance under this Contract, from one or more insurance companies authorized to do business in the State of North Carolina.
- 5.2** **Certificates of such Insurance** shall be furnished by Provider to the School District Contact and shall contain an endorsement to provide the School System written notice of any intent to cancel or terminate by either Provider or the insuring company. Failure to furnish insurance certificates or maintain such insurance shall be a default under this contract and shall be grounds for immediate termination of this Contract. **ATTACHMENT C** - provide summary and include certificates in the IFB.
- 5.3** **Commercial General Liability** – Distributor/Vendor/Vendor shall maintain Commercial General Liability insurance that shall protect the Distributor/Vendor/Vendor 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/Vendor/Vendor 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/Vendor/Vendor 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 canceled or terminated before the expiration, the issuing company will provide at least ten (10) days written notice to the School District.

6.0 DISTRIBUTOR / VENDOR PERSONNEL REQUIREMENTS

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

7.0 DISTRIBUTOR/VENDOR BID ERRORS AND PRICING REQUIREMENTS

- 7.1 **BID ERRORS:** The following two bid errors are non – negotiable and may result in bid disqualification.
- 1) **An Original signatures must be in Blue Ink,** a scanned copy of the form with an original signature of an authorized company official will be accepted.
 - 2) **ANY CHANGE TO THE IFB/CONTRACT LANGUAGE BY THE DISTRIBUTOR/VENDOR**
- 7.2 **MULTIPLE FLAVORS AND VARIETIES FOR A SINGLE LINE ITEM: ONE PRICE** is required for all flavors or varieties of the item the Distributor/Vendor/Vendor will stock. The Distributor/Vendor/Vendor and School District must communicate after the award as to flavors and volume to be stocked. **Multiple pricing per line item is not allowed.**
- 7.3 **QUANTITY REQUESTED PRICING –** The Distributor/Vendor/Vendor shall shop the market for the lowest price for the **quantity requested** on the bids received from the school district in order to reduce manufacturer changes.
- 7.4 **SPREADSHEET PRICING DIRECTIONS:** The **INSTRUCTIONS for completing the Bid Spreadsheets are provided with the bid.** The instructions provide full direction details regarding bid line items to be completed for pricing.
- 7.5 **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/Vendor/Vendor pricing in the bid spreadsheets.
- 7.6 **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 / Vendor shall contact Jennifer Lawson, Director of School Nutrition Services at jenniferlawson@johnston.k12.nc.us. The school district shall make the final determination of product equivalency and advise all potential bid parties through an email Bid Addendum.
- 7.7 **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 / Vendor NEW bid extensions

will be corrected and reported to the affected Distributor /Vendor(s.) All Distributor/Vendors will be notified of the corrected bottom line by the School District in the Preliminary Award Letter.

8.0 FIRM FIXED FEE BID PROCEDURES

8.1 FIRM FIXED FEE – The Distributor/Vendor Fixed Fee is charged “per case” and shall encompass the costs of the product’s receipt into storage, distribution, financing, profit, production losses, analyses cost, waste, labor, repackaging, overhead, transportation costs and ALL other costs of doing business for the line items in the bid.

8.2 The Fixed-Fee shall remain **firm for the duration** of the Contract, and for the duration of any School Nutrition Programs offered by the School District and any future Contract renewal period(s). Exceptions: Fuel Increase Force Majeure, Section 27.0 and agreement between School District and Distributor/Vendor to lower the fixed fee, Section 25.2.1

8.3 The Fixed-Fee will be the **same for ALL items** in relation to the pack size shown on the bid spreadsheet.

8.4 Fixed fee and Product substitutions: In the event of a product substitution, the Fixed - Fee charged by the Distributor/Vendor shall also apply to all other pre-approved brands in that specification and any optional brand priced or offered by the Distributor/Vendor and approved by the School District for that bid specification.

9.0 DISTRIBUTOR / VENDOR BID AWARD METHOD:

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

9.1 FORMULA FOR THE COST PLUS - FIXED FEE METHOD:

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

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

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

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

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/Vendor, and no change or cancellation may be made except as provided in this IFB Contract or its addenda.

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.

10.3 PRODUCT USAGE ESTIMATE is a guide for Manufacturers and Distributor/Vendors/Vendors as to the potential product usage of the school district, but under no circumstances guarantees product usage.

10.4 COMMUNICATION: The awarded Distributor/Vendor/Vendor shall communicate continuously via electronic messaging with the School District customer concerning product orders, product movement levels, substitutions, inventory, manufacturer shortages, production issues, etc.

- 10.5 CUSTOMER ISSUES:** The Distributor/Vendor/Vendor 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.
- 10.6 Distributor/Vendor 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.
- 10.7 HACCP:** All Distributor/Vendors/Vendors submitting bids must provide a current **Hazard Analysis Critical Control Point Summary (HACCP)** describing the Distributor/Vendors/Vendors 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**
- 10.8 INTERFACE WITH MANUFACTURERS:** The Distributor/Vendor/Vendor must communicate with Manufacturer regarding district problems relating to product levels and product quality and provide the school district notification of supplier issues, including but not limited to, production, shortages, transportation or product discontinuance. **A Manufacturer Letter describing the circumstances and effective dates is required from the Distributor/Vendor/Vendor to the School District.**
- 10.9 COLLECTION OF SPECIFICATIONS:** Manufacturer partners are required to provide current and accurate product specification information, including nutritional analysis and Allergen Statements. Manufacturer specification data must be current as it provides documentation data for the Smart Snack portion of the review conducted by the North Carolina Department of Public Instruction. Specification Sheets are due at the time of bid submission.
- 10.10 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 reDistributor/Vendors arising from purchases made under this IFB (hereinafter “Applicable Discounts, Rebates or Credits”). Distributor/Vendor/Vendor may receive and retain earned income, defined as income and profit earned by the Distributor/Vendor for work or services performed by the Distributor/Vendor 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.
- 10.11 MINIMUM SHIPMENTS:** The awarded Distributor / Vendor must provide bid product brands/codes requested by the School District provided the School District meet(s) manufacturer minimum shipment requirements to the Distributor / Vendor.
- 10.12 ON – SITE INSPECTIONS:** The School District reserves the right to request the Distributor / Vendor documentation, on-site inspections of facilities, delivery vehicles and records at any time during the Contract period.
- 10.13 PRODUCT RECALL:** The Distributor / Vendor 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 / Vendor 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 assurance that unsafe products are identified and removed from school sites in an expedient, effective and efficient manner. The Distributor / Vendor is responsible for any consequences arising from the failure to make immediate notification. A one-page summary of the **Distributor / Vendor’s Food Recall Policy/Procedures** is required to be submitted with the Bid in **ATTACHMENT E.**

10.14 PROTEST PROCEDURE: Protests by the Distributor / Vendor must be submitted in writing, with supporting documentation, to the issuing School District within **five working days** after bid award. Protests should be made to the School District at jenniferlawson@johnston.k12.nc.us.

10.15 SUB-CONTRACTING: The awarded Distributor / Vendor will deliver all item(s) to the School District at the proposed price, in accordance with the item specifications and the General Terms and Conditions contained in this IFB/Contract. **Sub-contracting of this Contract is not permitted** for any reason without the prior written permission of the School District.

10.16 MERCHANDISERS: The Distributor / Vendor shall provide at least one merchandising freezer at each location.

11.0 PRODUCT QUALITY, PRODUCT SPECIFICATIONS AND RECOURSE FOR MISREPRESENTATION

11.1 All food products supplied by the Distributor / Vendor 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. Perishable products shall be labeled with an expiration date or best if used by date. Products shall be delivered fresh with adequate expiration dates.

11.2 Any change to a "Distributor / Vendor Bid" brand and code product specifications shall be provided to the School District immediately by the Distributor / Vendor. 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 / Vendor 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 / Vendor 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.

12.2 The School District will share with the Distributor / Vendor information including regarding the school schedule. Refer to Attachment F- 2024-2025 School Calendars

13.0 TIE BID, BID ERRORS, BID REJECTION

13.1 TIE BID: In the event of a tie on a bid, the deadlock will be decided in the following order:

- The largest pack size with the same unit cost per serving.
- Documented evidence of unresolved service issues with a Distributor / Vendor
- Distributor / Vendor is certified as Small Business/Minority Business/Women Owned Business.
- All else being equal, by coin toss by the School District with tie Distributor / Vendors 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 Distributor / Vendors 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 / Vendor's bid disqualification.

14.0 PRELIMINARY Distributor / Vendor BID AWARD

14.1 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 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.

15.0 SUBSTITUTION AND DISCONTINUED PRODUCT REQUIREMENTS

- 15.1 The Distributor / Vendor awarded the Contract shall order goods from manufacturers in economical quantities and maintain inventories at a level sufficient to prevent out of stock situations while avoiding excessive inventories which may be counter-productive to efficiency. Product substitutions due to out of stock situations should be held to an absolute minimum. Distributor / Vendor “out of stock” percentage is expected at 3% of invoice orders or less. Excessive substitution due to Distributor / Vendor order errors may jeopardize future business from the School District or invoke Termination Proceedings.
- 15.2 Any Distributor / Vendor 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 the quantity of School District estimated usage affected by Distributor / Vendor 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 / Vendor **MUST** e-mail or fax the school district, for pre-approval by the School Nutrition Director, current specification sheets with ingredient lists, nutritional analysis and allergens for each proposed substitution a minimum of **24 HOURS IN ADVANCE** of the delivery. The Distributor / Vendor may substitute pre-approved brands within a specification without supplying product specifications, but 24 HOURS ADVANCE notification of substitution is still required. The Distributor / Vendor 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 / Vendor to alleviate **Distributor / Vendor out of stock** situations, due to buyer or other Distributor / Vendor error, must be of (1) the same or higher quality as the regular stock, (2) the same or lower portion cost than regular stock and (3) delivered for the same flat fixed-fee per case as the original product, adjusted for pack differences. (for example: the original product was packed 100, the substitute is packed 50. The District should only pay half of the flat fixed fee per case.) The invoiced price for a substituted product is to be adjusted to the **current or lower bid price per serving/unit** to avoid incorrect billing at time of delivery. Substituted products are approved by the School District.
- 15.5 Any substitution for a bid specification brought in by the Distributor / Vendor to alleviate a **Manufacturer out of stock**, or discontinued production, must be approved in advance by the School District and be of (1) the same or higher quality as the regular stock, (2) the same or similar cost as the regular stock and (3) delivered for the same flat fixed fee as the original product, adjusted for pack differences. (for example: the original product was packed 100, the substitute is packed 50. The District should only pay half of the flat fixed fee per case.) The invoiced price for a substituted product is to be adjusted to the **current or lower bid price per serving/unit** to avoid incorrect billing at time of delivery. Substituted products are approved by the School District.
- 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 / Vendor.
- 15.7 If a substitute product is not approved by the School Nutrition Director, or designee, the School District shall, in good faith and in its sole discretion, purchase a product of equal or greater quality from another source. The Distributor / Vendor 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 / Vendor 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 / Vendor.

- 15.8** If a pre-approved bid product on the bid sheet is discontinued by the manufacturer, the Distributor / Vendor shall immediately notify the School District. If the bid specification has other pre-approved brands, the Distributor / Vendor shall price the remaining pre-approved brands on the bid line and offer the best pricing. If there are no other pre-approved brands or the item is Private Label, the Distributor / Vendor shall shop the market and offer a product that is of the same quality and cost when possible. It is the decision of the local School District to accept or decline a replacement product.

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

16.1 MID - TERM ECONOMIC PRICE ADJUSTMENT

16.1.1 Whenever a manufacturer, packer or supplier increases rather than extends the cost of a Distributor / Vendor bid product, the Distributor / Vendor 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 /Vendor shall shop the market for “Best Buys” and provide documentation of such efforts on behalf of the School District with any Mid-Term price increases. Prior to petitioning the School District for price increases, the Distributor / Vendor must solicit written manufacturer quotations to the School District.

16.1.2 MID-TERM AUDIT: The School Nutrition Director, or designee, will provide Distributor / Vendors with a list of products, from the Price Increase/Decrease List to be audited by January 10 of each year. The School District will collect the required documentation, review and resolve issues and notify Distributor / Vendors Audit Results, and any audited price changes, by January 10 each year. School Districts will provide written notification to their Distributor / Vendor of approval or disapproval of the Mid – Term Price Increase/Decrease changes before February 1 of each year.

- 16.2** 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:

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

16.2.2 Actual manufacturer's invoices or data generated from Distributor / Vendor receiving reports including any freight cost.

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

16.2.4 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.

16.2.5 The Distributor/Vendor 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/Vendor's Bid.

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

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

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

Undercharges: Whenever an invoice from a manufacturer reveals that the price of a product, delivered to the Distributor/Vendor'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/Vendor's responsibility to request a price increase for that product using procedures outlined in the Force Majeure section 33.0 of this IFB. The awarded Distributor/Vendor 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/Vendor 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/Vendor awarded the Contract and the School District. Printed or electronic order guides shall be furnished by the Distributor/Vendor for recording and/or transmitting orders. If Internet-based, electronic ordering systems are used, the Distributor/Vendor will provide training on use of their ordering system to necessary School District personnel. The Distributor/Vendor must block non-bid items from electronic ordering systems available to the School District.

17.3 The Distributor/Vendor awarded the Contract shall provide a representative to screen orders, discuss orders with the School Nutrition Director, or designee, **on a bi-weekly basis**; the representative shall ensure compliance with scheduled delivery, discuss substitutions and shortages, facilitate approval of substitutions, finalize orders for delivery (including USDA Donated Foods if required), and screen delivered orders for shortages, errors, and pricing mistakes.

17.4 Distributor/Vendor bidding may require the School District to place minimum orders of \$150.00 per school site, based on the dollar amount at the time the order is placed.

17.5 In the event the School District requests one site delivery that includes orders for more than 1 school in order to meet the minimum delivery requirement, the School District will provide separate Purchase Orders for each school and the Distributor/Vendor will provide a separate invoice for each school order.

17.6 The School District must give a 24-hour notice for an order cancellation not related to weather.

18.0 BILLING AND PAYMENT REQUIREMENTS

18.1 Payment will be due to the Distributor/Vendor awarded the Contract within (45) days of date of the statement, or more frequently, as designated by the School District in Special Conditions.

- 18.2 The Distributor/Vendor awarded the Contract shall provide each School District separate invoices and statements for bid items.
- 18.3 The Distributor/Vendor awarded the Contract shall issue credit memorandums for returned/picked up items within ten **(10) working days** from the request to do so. Failure to issue credit memorandums in a timely manner shall constitute grounds for withholding payments.

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 School Nutrition Director and Distributor/Vendor in a meeting after award of the Contract. Any deviation of the Distributor/Vendor from the schedule will require notification of the School Nutrition Director or designee.
- 19.2 Only one (1) Distributor/Vendor delivery per school site bi-week is anticipated, but the School District reserves the right to require more/less than one delivery per week, as needed and as volume requires. Known need for deliveries of more/less than one per school site per week shall be indicated within **Special Conditions**. School districts will make efforts to work with the Distributor/Vendor to consider order volumes and reduce frequency of small volume deliveries.
- 19.3 Delivery schedules shall be submitted by the Distributor/Vendor to the School Nutrition Director for approval a minimum of two (2) weeks prior to the first delivery and remain constant from week to week. To the degree possible, delivery routes should feature dedicated trucks that deliver in sequence to district schools on a predictable timetable. Conflicts with arrival and departure of students/staff may require Distributor/Vendor changing delivery routes for safety concerns.
- 19.4 The Distributor/Vendor shall be notified by the School District in advance of holidays, student vacation and teacher workdays so that arrangements can be made for deliveries as approved by the School Nutrition Director. The School District shall provide the Distributor/Vendor the school calendar. The School District will make efforts to provide advance notification to the Distributor/Vendor in the event of weather-related closings.
- 19.5 Each Distributor/Vendor 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/Vendor 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/Vendor, 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/Vendor drivers and helpers shall request the authorized school cafeteria manager, or the approved designee, to verify the accuracy of quantities of each item, brand and code numbers of each item and condition of merchandise from a delivery ticket. A designated school receiver shall sign each delivery ticket. Variations from the norm i.e., shortages, damages, etc., shall be noted on each ticket by the designated school receiver and initiated by both the truck driver and school receiver. The Distributor/Vendor 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 AND USDA DONATED FOODS WAREHOUSING CHANGE CHARGES

- 20.1** The Distributor/Vendor 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/Vendor 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 June 30 of each contract year. The School District reserves the right to seek agreement of the Distributor/Vendor 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, FIRM PRICE ITEMS AND SPECIAL CONDITIONS** The School District reserves the right to renew the Distributor/Vendor Fixed Fee(s) as stated on the original bid Official New Distributor/Vendor Bid Tabulation Page. Renewal can be requested each year for a period not to exceed four (4) additional (1) year terms, after the original bid year, with mutual agreement of the School District and the Distributor/Vendor concerning the following:

21.2.1 The same, or lower, Distributor/Vendor fixed fees may be renewed and if requested, The school district may negotiate a lower fixed fee with the Distributor/Vendor 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 27.0 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** The verbal Contract Renewal process may be initiated by either the school district or the Distributor/Vendor in February of each year.
- 22.2** Renewal Documents Required: The Bid Renewal Certification Agreement, Special Conditions Update must be approved by the Distributor/Vendor, if not, the district must re-bid. And, if required, the annual Foods Storage Contract must be completed, signed and returned to the School District by the Distributor/Vendor no later than the due date.
- 22.3** The original (first year) bid contract documents, addenda and all attachments are to be maintained as the ORIGINAL BID AGREEMENT between the Distributor/Vendor 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/Vendor.
- 22.5** The School District completed Purchase Order to the Distributor/Vendor 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/Vendor, at the same time as School Districts soliciting NEW bids, to provide Distributor/Vendors sufficient usage data for product contracts and ordering

- 22.7 Renewing School Districts will receive the Manufacturer New Bid Year Cost Pricing for renewal via e-mail from their Distributor/Vendors **the day after bid opening**; however, pricing is subject to change if adjustments are made due to the Pre-Bid Audit by 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/Vendor may propose an increase in the flat fixed – fee if the following conditions exist: On the first Monday in November, if the price of fuel exceeds thirty (30) percent of the base fuel price, as established on the date of the initial Bid opening according to the Weekly on Highway Diesel Prices for the Lower Atlantic Region issued by the U.S. Energy Information Administration at: https://www.eia.gov/dnav/pet/pet_pri_gnd_dcus_r1z_w.htm
- 23.2 If conditions exceed 30% of the base fuel price, Distributor/Vendor may submit a written request for a mid-contract adjustment to the fixed - fee; the request must be submitted to the School Nutrition Director of the School District with a copy to, School District Coordinator, a minimum of 60 days prior to February 1. The request must include justification and market documentation for the increase based on fuel cost.
- 23.3 To propose an increase in the fixed - fee, the Distributor/Vendor 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/Vendor's original Bid.
- 23.5 The increase in the flat fixed – fee, based on fuel prices, may not exceed \$.06 per unit in a contract period. The increase in the fixed - fee adjustment at mid-Contract will take effect on Feb. 1 of the contract year.
- 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/Vendor may propose an increase in the fixed - fee, using the same procedure described in Item . The adjustment to the fixed - fee shall not exceed \$.06 per unit. If, however, the price of fuel has dropped by thirty (30) percent from the base that was established on November 1, the Distributor/Vendor shall reduce the fixed - fee accordingly.

24.0 PRODUCT USAGE REPORTS FROM DISTRIBUTOR / VENDOR

- 24.1 The Distributor/Vendor awarded the Contract shall provide UPON REQUEST electronic product utilization reports to the School Nutrition Director, or designee, within 4 days of the request. These reports shall be submitted for total quantity delivered per line item (including substitutes for a bid line item) in the terms of bid units per school delivery point and/or combined district total.
- 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 Distributor/Vendors will submit a utilization report to the School Nutrition director or designee 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 Vendor Item Number (first column on the bid spreadsheet) shall be included on the spreadsheet.

25.0 RECORDS RETENTION REQUIREMENTS

- 25.1 By signing this bid, the Distributor/Vendor 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/Vendor 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.
- 25.3** The Distributor/Vendor 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/Vendor ASSURES that, to the best of his/her knowledge:

- 26.1** Neither the Distributor/Vendor nor any business entity represented by the Distributor/Vendor has received compensation for participation in the preparation of the item 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/Vendor with respect to this IFB/Contract.
- 26.3** The Distributor/Vendor 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.
- 26.4** Neither the Distributor/Vendor, 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/Vendor, 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

- 27.1** By signing this bid, the Distributor/Vendor 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/Vendor has noted any and all relationships that might be conflicts of interest and included such information with his/her bid response, the bid submitted conforms to all item specification, these General Terms and Conditions, and any other instructions, requirements, or schedules outlined or included in this IFB, if this bid is accepted, in whole or in part, the offering entity will furnish any item(s) awarded to them under this IFB to the school district at the proposed price and in accordance with the item specifications and the General Terms and Conditions contained in this IFB, the offering entity has, or has the ability to obtain, such financial and other resources, including inventories, as may be required to fulfill all the responsibilities associated with this bid.
- 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/Vendor will comply with any reasonable request from the school district to supply any

information sufficient to substantiate the proposing entity's ability to meet minimum standards, concerning Sections 4.0, 5.0 & 6.0 above, the offering entity has identified and disclosed in this written bid any and all known suspected matters that would disqualify it from participating in this bid or receiving any award or contract related to this bid, recognizing that the officer's failure to identify and disclose any such matters constitutes its affirmation that no such matters exist, and that failure to disclose in this bid any such matters which do exist is a material breach of contract which would void the submitted bid or any resulting contracts, and subject the offeror to removal from all procurement lists and possible criminal prosecution the offering entity has obtained, and will continue to maintain during the entire term of this contract, all permits, approvals or licenses necessary for lawful performance of its obligations under this contract, the prices, prompt payment discount terms, delivery terms, distribution allowances, and the quality and/or performance of the products offered in the bid will be competitive with those offered to a similarly situated customers in North Carolina. A similarly situated customer means a customer purchasing a similar or lower volume of products and subject to similar material General Terms and Conditions, including similar service and delivery requirements, contract duration, payment terms, geographical distribution, allowances, business mix and total sales, as analogous to the potential relationship contemplated between Distributor/Vendor.

- 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 void the submitted bid or any resulting contract(s), and subject the bidder to removal from all procurement lists, and possible criminal prosecution, Distributor/Vendor s 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 / VENDOR NON-PERFORMANCE OF CONTRACT, AND TERMINATION OF CONTRACT

- 28.1** If the Distributor/Vendor 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 Distributor/Vendors delay in the above will constitute the Distributor/Vendor's material breach of contract, whereupon the school district may terminate the Distributor/Vendor'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) 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.

- 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/Vendor, 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/Vendor's failure to adhere to any of the provisions of the General Terms and Conditions of this IFB,
- the Distributor/Vendor delivering any product(s) that fail to meet the Item Specifications included in this IFB relating to the awarded product(s),
- the Distributor/Vendor 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/Vendor's failure to provide timely, accurate billing and credits to the school district,
- the Distributor/Vendor's failure to meet the required delivery schedules as identified in the contract documents, or
- the Distributor/Vendor's violation of any other provision contained within these General Terms and Conditions or any attachment thereto which provides for contract termination as a remedy. Including, but not limited to, the purchase of other products of like type and quality from other sources in the open market. In the event the School District elects to purchase other products from other sources, the School District will invoice the Distributor/Vendor for any increased costs to the School District and the Distributor/Vendor agrees, by submission of a bid response, to promptly pay any such charges invoiced.
- In the event the School District terminates this Contract, in whole or in part, for any reason provided for within the contract, the School District reserves the right to award the canceled Contract, or any portion thereof, to the next lowest or most responsible offeror as it deems such award to be in the best interest of the school district.
- Any Contract termination, or persistent documentation of breach of contract provisions, resulting from any cause other than a Force Majeure event, will be deemed valid reason for not considering any future bid from the defaulting Distributor/Vendor. In the performance of this contract, time is of the essence and these General Terms and Conditions are of the essence.

29.0 FORCE MAJEURE PROCEDURES

- 29.1** The party seeking relief due to Force Majeure will be required to promptly notify the School District via email amandajackson@johnston.k12.nc.us in writing, citing the details of the Force Majeure event, including documentation. If approved, the Distributor/Vendor will be notified via a signed Force Majeure Request Form which is sent to the School District(s).
- 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/Vendor's industry equally and are not actions taken solely against the Awarded Distributor/Vendor; 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; or supply chain disruption.
- 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/Vendor because of the Force Majeure event unless the school district has requested, in writing, that the Distributor/Vendor 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/Vendor'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) working days, the demanding party may treat this failure as an anticipatory repudiation of the contract.

32.0 REGULATORY COMPLIANCE

32.1 The Distributor/Vendor 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).

32.2 The Distributor/Vendor 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/Vendor 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.

32.4 The Distributor/Vendor 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/Vendor 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/Vendor shall comply with the provisions of the Consumer Product Safety Act.

32.7 The Distributor/Vendor shall provide notification of **HUB Certification. ATTACHMENT G**

32.8 The Distributor/Vendor shall complete and sign the **Certification of Contracts, Grants, Loans, Cooperative Agreements and Lobbying ATTACHMENT H** and shall include this document as part of the Agreement.

- 32.9** The Distributor/Vendor shall provide notification of **Debarment, Suspension and Other Responsibility Matters – Primary Covered Transactions** **ATTACHMENT I**
- 32.10** The Distributor/Vendor 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 Distributor/Vendor shall comply with the provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).
- 32.12** The Distributor/Vendor shall comply with the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).
- 32.13** The Distributor/Vendor shall comply with the provisions of the Davis-Byrd Act, as amended (40 U.S.C. 3141-3148).
- 32.14** The Distributor/Vendor shall comply with the provisions of the Rights to Inventions Made Under A Contract or Agreement. <https://www.law.cornell.edu/cfr/text/37/part-401> go to this link for scope and definitions

ATTACHMENT J – No Bid Response