



## Sugar Creek Charter School Standard Terms and Conditions

**IFB CONTRACT #: 60B 26-1 MILK**

### 1. Scope and Purpose

It is the intent of the school food authority (SFA) to contract with a supplier for the purchase of MILK. This document serves to ensure compliance with federal and state procurement regulations, promote competitive and transparent purchasing, and facilitate the selection of the best products and prices for the Sugar Creek Charter School Child Nutrition Program.

The section titles contained in this Standard Terms and Conditions document are for convenience and reference only, and in no way define, describe, extend or limit the scope or intent of the provisions of any section of this document.

The term “Contract”, as used in this document, means the comprehensive collection of:

- A. this Standard Terms and Conditions document, including any attachments and/or amendments thereto
- B. the Item Specifications document included in the Invitation for Bid (IFB) and any subsequent addenda thereto,
- C. the Invitation For Bid (IFB) Distributor Contract Letter,
- D. the completed Distributor Bid Certification and Agreement, signed by an authorized representative of the offering entity, and returned, along with the ENTIRE Standard Terms and Conditions document and all other forms and information collection pages included with this IFB and Bid Certification and Agreement.

Collectively, these documents represent the entire agreement between the parties.

All procurements under this IFB shall be conducted in accordance with the SFA’s written Procurement Plan, as required by 2 CFR 200.318(a), and in accordance with 2 CFR part 200, USDA regulations at 7 CFR 210 and 220, and applicable state and local laws and regulations. In the event of any inconsistency, this contract shall be interpreted to conform to those federal requirements.

All procurements conducted under this Invitation for Bid shall provide full and open competition consistent with 2 CFR 200.319. The School Food Authority (SFA) shall conduct this procurement in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except to the extent that such preference is expressly permitted by 7 CFR 210.21 and 7 CFR 210.21(g). No contractor or sub-contractor may develop or draft specifications, requirements, statements of work, invitations for bids,

requests for proposals, or contract terms and conditions that are used in this procurement when such contractor or sub-contractor will compete for the award, in accordance with 2 CFR 200.319(b).

## 2. Contract Time Period

The period of time for purchases covered by a contract resulting from an award under this IFB is stated in the Distributor Bid Certification. Unless otherwise indicated in these Standard Terms and Conditions, all pricing will be cost plus fixed fee throughout the entire contract period with a triannual (three times per year) price adjustment.

Upon mutual written agreement of both parties, the awarded contract may be renewed for up to four (4) one-year agreements.

The transfer, assignment or subcontracting of contracts is prohibited, and the distributor agrees not to sell, assign, transfer, convey or subcontract any portion of this contract resulting from the IFB.

## 3. Addendum

In the event any changes to the IFB occur subsequent to the mailing or other delivery of the original IFB, the changes or corrections to this bid request will be made by addendum and any updated information contained in any addendum will prevail over the information contained in the original IFB or any previous addendum. Each addendum will be mailed to all entities that are known to have received a copy of the IFB. The SFA is the sole authority for the issuance of any addendum related to this IFB. Any communications from any person or entity other than the SFA regarding any matters related to this bid are invalid and will have no influence on this IFB.

## 4. Specifications

Catalog numbers, brand names or manufacturer's product or reference numbers used in the item specifications are intended to be descriptive, not restrictive. These references, as well as "approved brands" listed, are intended to identify and indicate the type of product being sought, and establish the level quality desired. If any conflict exists in the item specification between the product descriptions and any brand names or model or reference numbers used, the product descriptions will override the brand names or product number references.

In most cases, bids on brands of equivalent nature and quality will be considered, provided they are a regularly produced product from a reputable manufacturer. However, in some cases, the SFA may find it advantageous to standardize equipment and/or supplies by manufacturer in order to achieve efficiencies in procurement, repair, and operation, to match existing stock, or to satisfy other requirements. In these cases, preferences will be given to the specific products identified as "approved brands" especially if all other evaluation factors are deemed to be equal. For this reason, where specific brands or products are identified, it is preferable for the distributor to propose the exact item specified, in addition to an alternate brand or model where desired.

All bids must identify the manufacturer, brand, portion size, etc. of the product being offered. “Pre-approved equal” brands may be allowed where indicated. To offer “pre-approved equal” items rather than any ‘approved brands’ specified, the distributor must supply a complete description and sufficient data for the SFA to properly analyze the product being compared. Samples may be requested for items other than ‘approved brands’. The “pre-approved equal” brands must be approved by the SFA before the bid opening. The SFA reserves the right to reject any brand submitted if the SFA does not have sufficient information or time to conduct taste testing in order to deem the product as a ‘pre-approved equal”.

When one or more brand names or product identifiers are used in specifications, they are intended to describe the quality, performance characteristics, and attributes of the item being solicited, and not to restrict competition. Equivalent products, commonly described as “brand name or equal,” will be considered in accordance with 2 CFR 200.319(a), provided that the offered item is of equal or better quality, function, and performance. Bidders offering an “equal” product must clearly identify the manufacturer, brand, pack size, and provide sufficient descriptive and technical information, and samples when requested, to permit evaluation of equivalency by the SFA. The SFA reserves the right to determine whether a proposed product is equivalent.

If the distributor fails to identify the manufacturer, brand, portion size, etc. for any items included in the bid, the SFA will assume the distributor is proposing the exact brand/product and portion size identified in the specification, and if awarded, the distributor will be required to furnish the exact brand names, portion sized, etc. as specified. Substitutions will not be allowed. If the specifications are silent or omit detailed descriptions on any point, it shall be understood that the highest standard of communication practice apply. All interpretations of the specifications shall be made on the basis of this statement.

If you discover or suspect error in the item specifications in the IFB, please note it as part of your bid response.

## **General Specification Provisions**

### **A. Quantities**

Quantities reflected in the IFB are estimated based on the combined projected needs for the SFA during the contract period. Quantities are the best estimate of anticipated needs available at the time of publication of this IFB, but the accuracy of this estimate of these quantities may be affected by numerous factors including but not limited to, budgetary adjustments, 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.

### **B. Packaging**

Unless otherwise provided for in this IFB, all products supplied under any contract resulting from this IFB must be packaged in containers that are new, appropriately designed for the products involved, and sturdy enough to protect the products involved in loading, transit, unloading and storage. Any products supplied under contract resulting from this IFB for which palletizing is appropriate must be delivered on standard 48" 4-way pallets in good, serviceable condition.

C. Pricing

All line items bids must be for a specific price for the unit of measure specified for that item. The distributor is responsible for clearly noting any differences in proposed packaging and/or units of measure in the bid response, and the distributor shall understand that if the item in question is awarded to the distributor, the quantity specified for that item will be adjusted to achieve an approximately equivalent amount of the product. In cases where another price is requested for comparison purposes (e.g. portion price or price per ounce), such price is for comparison purposes only. Purchases will be made in the increments of the unit of measure specified. In the case of any discrepancy or error in comparison price calculations, the price for the unit of measure specified will prevail. Excessive errors in comparison price calculations will be sufficient grounds for rejection of the entire bid. Discount from catalog IFBs requires a single discount percentage to be applied to all items in the distributor's published catalog, which must be supplied with the bid response. All bid prices shall be inclusive of all costs, and no separate fuel surcharge, handling fee, delivery fee, freight charge, or similar charge will be accepted.

Allowable costs will be paid from the nonprofit school food service account to the distributor/contractor net of all discounts, rebates and other applicable credits accruing to or received by the contractor or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to the SFA. The distributor/contractor agrees to fully disclose all discounts, rebates, allowances, and incentives from any supplier, and must disclose and return to Sugar Creek Charter School the full amount of the discount, rebate, or applicable credit that is received based on the purchases made on behalf of Sugar Creek Charter School. All discounts, rebates, allowances, and incentives must be returned to Sugar Creek Charter School during a mutually agreed upon timeframe that is beneficial to the school district. If during the term of the contract, a successful distributor's net prices to any or all of its other customers in similar market circumstances for any of the same items awarded under this IFB are reduced below the contracted price, it is understood and agreed that the benefits of such price reduction shall be extended to the SFA.

For any cost-reimbursable portion of this contract, the contractor's fees and costs shall be paid from the nonprofit school food service account only to the extent the costs are allowable under 2 CFR part 200, subpart E and 7 CFR 210.21(f). The contractor shall identify and report to the SFA, in a form and frequency required by the SFA, all discounts, rebates, incentives, and other applicable credits received from or accruing to the contractor or any of its affiliates related to purchases made on behalf of the SFA under this contract. The SFA shall receive the full amount of all such discounts, rebates, incentives, and credits, to the extent they are allocable to the allowable portion of the

costs billed to the SFA, either as a payment to the SFA or as a credit on the invoice, in accordance with 7 CFR 210.21(f)(1). For any cost-reimbursable portion of this contract, the contractor shall either (1) separately identify on each invoice the allowable and unallowable costs under 2 CFR part 200, subpart E, or (2) certify on each invoice that only costs allowable under 2 CFR part 200, subpart E and 7 CFR 210.21(f) are billed to the SFA, and shall maintain records sufficient to identify and remove any unallowable costs, as required by 7 CFR 210.21(f)(1)(ii).

D. Delivery and Transportation

Unless otherwise noted in these Standard Terms and Conditions or the purchase order, or unless prior approval has been obtained from the SFA, all deliveries shall be made between the hours of 5:45 AM and 1:30 PM Monday through Friday, except holidays.

Sugar Creek Charter School has two (2) campus locations for deliveries. Deliveries for items should be made to both campus locations as ordered.

1. Sugar Creek Charter School Main Campus: 4101 North Tryon Street; Charlotte, NC 28206
  - i. Groceries: one (1) times per week
  - ii. Produce: two (2) times per week
  - iii. Milk: two (2) times per week
  - iv. Supplies and Chemicals: one (1) time per week or as needed
2. J. Frank Martin High School Campus: 7815 Old Concord Road; Charlotte, NC 28213
  - i. Groceries: one (1) time per week
  - ii. Produce: one (1) time per week
  - iii. Milk: one (1) time per week
  - iv. Supplies and Chemicals: one (1) per week or as needed

Unless otherwise noted in the IFB or in the purchase order, the distributor must deliver products awarded under this IFB within ten (10) working days after receipt of a purchase order. The vendor must immediately notify the SFA, by telephone and/or email, if any delays occur. The SFA will have the option to cancel the order if unable to accept the delay. At the discretion of the SFA, items received after the due date, for which the SFA has not been notified regarding the delay, may be returned at the vendor's expense with no penalty to the SFA.

Repeated failure to meet delivery dates will constitute a breach of contract by the vendor, and may result in the initiation of actions covered in this Standard Terms and Conditions document entitled "Remedies for Non Performance of Contract and Termination of Contract" and the associated financial impacts attached thereto, as well as jeopardize any further business from the SFA.

All freight, delivery, fuel, and handling charges are the responsibility of the distributor, and all bid prices must be quoted freight prepaid, FOB destination, and shall include all freight, delivery, fuel and handling charges, including unloading and inside deliveries where required.

Cartons must be marked with appropriate product identifying information as indicated on the purchase order. Each shipment must include a packing list and waybill or delivery ticket.

If the vendor is delivering product out of more than one warehouse or distribution center, all warehouses or distribution centers involved in the distribution plan MUST carry or have timely access to all awarded items and MUST be able to respond to orders in a timely manner. Unless otherwise specified in this IFB, product substitutions are not allowed, and the involvement of multiple distribution centers will not be construed as to alter the restrictions against product substitutions. In the event the vendor uses multiple distribution centers, the SFA will have one contact person for overall contract management relative to any contract resulting from any award under this IFB, and the SFA will not be required to deal with multiple contacts for overall contract management.

When the needs of the SFA require immediate response, the right to pick up products awarded under this IFB on an 'over the counter' basis must be available for the majority of the items awarded to a vendor. Under such circumstances, the SFA's personnel may pick up products at the vendor's warehouse location at the agreed upon price with no minimum purchase required.

Except for items that have hidden defects or that do not meet specification, title to all products shall pass to the SFA upon receipt and acceptance at the time of delivery.

E. Quality

Unless otherwise indicated in the IFB, all items proposed must be new and in highest quality condition and must conform to the highest standards of manufacturing practice, including containers suitable for shipment and storage. Unless otherwise requested, the SFA will not accept "factory seconds" or otherwise inferior goods, and reserves the right to return any such items(s) within thirty (30) days of receipt at the vendor's expense.

All electrical items must meet all applicable OSHA standards and regulations, and must bear the appropriate listing from US, FMRC, NEMA or UL Laboratories.

F. Product Inspection, Testing and Defective Items

All products supplied under this contract should arrive in the best possible condition and will be subject to inspection, testing and approval by the SFA. Tests may be performed on any samples submitted as part of the bid or valuation process, or on samples taken from any regular shipment. In the event any product tested fails to meet or exceed all requirements of the bid item specifications or the Standard Terms and Conditions of the IFB, the cost of the samples used and the cost of the testing shall be borne by the supplier, and upon notification to the vendor, the defective product(s) will be picked up and replaced by the vendor. Repeated incidents of delivery of products that fail to pass product inspection and/or testing by a vendor will warrant cancellation of the contract in addition to the remedies outlined above. Furthermore, future business from the SFA could be jeopardized.

Products damaged in shipment will be considered as defective products and will be subject to the same remedies outlined above.

The failure of any consumable products (food items) to meet specifications or acceptable chemical or bacterial levels may result in cancellation of the contract in addition to the remedies outlined above.

Furthermore, future business from the SFA could be jeopardized. All products in the SFA's warehouse at the time of any such cancellation must be picked up and credit issued to the SFA. Latent defects discovered after delivery and acceptance of any products may result in revocation of the acceptance.

The SFA shall have access to any supplier's place of business during normal business hours for the purpose of inspecting merchandise.

G. Samples

If samples are needed for bid evaluation, they will be requested as part of the IFB or in a separate communication. Unless otherwise indicated in the request for the samples, the samples must be received by the requestor within 72 hours from the time of the request.

Samples must be furnished free of expense to the SFA. Samples must be labeled with the SFA bid name, item number, product identification number(s), and the name of the offering entity. Do not include samples with the bid response unless otherwise instructed in the IFB.

All samples will be retained by the SFA for a sufficient length of time for proper evaluation. If not destroyed or consumed during examination of testing, samples will be returned to the distributor at the distributor's expense, but only upon written request submitted with the samples at the time the samples were submitted. However, notwithstanding the above samples from the successful distributor may be retained permanently by the SFA for the purpose of determining the quality of the delivered items are comparable to the samples. The SFA shall incur no liability for any samples that are damaged, destroyed or consumed during examination or testing.

Failure by any distributor to submit samples when requested will result in the items in question not being considered for award to that distributor.

H. Warranties

By submission of a bid, the distributor warrants that he/she is an authorized dealer, distributor, or manufacturer for the product(s) being offered, that all items proposed conform to the specifications for which the items are being offered, and that all items supplied under any contract related to this IFB will be free from all defects in material, and title.

A minimum of 90 days' product guarantee or the manufacturer's standard commercial warranty, whichever is greater, shall apply to all products purchased under this IFB. This warranty shall provide for replacement of defective merchandise from the SFA location and delivery of the replacement(s) to the same location. The warranty shall be effective from the date of acceptance of the merchandise.

I. Buy American Provision

School Food Authorities participating in the National School Lunch Program and School Breakfast Program are required, to the maximum extent practicable, to purchase domestic commodities and products as required by 7 CFR 210.21(d) and 7 CFR 220.16(d). A “domestic commodity or product” is one that is produced in the United States and processed in the United States substantially using agricultural commodities that are produced in the United States; “substantially” means that over 51 percent of the final processed product consists of agricultural commodities grown domestically, as defined in 7 CFR 210.21(d).

The contractor shall ensure that all food products supplied under this contract that are purchased with School Nutrition funds comply with the Buy American provision and shall, upon request, certify the domestic origin of such products and provide supporting documentation (e.g., country- of- origin statements, manufacturer letters, or other records) sufficient to demonstrate compliance.

Any proposed use of a non- domestic agricultural commodity or product must be requested in writing and approved in advance by the Child Nutrition Supervisor. Exceptions will be considered only when: (1) a product is not produced or manufactured in the United States in sufficient and reasonably available quantities of a satisfactory quality, or (2) a domestic product is available only at a significantly higher price, consistent with 7 CFR 210.21(d). The contractor shall provide documentation to support any requested exception and shall not substitute non- domestic products without prior written approval.

The contractor shall maintain records of the domestic and non- domestic status of all products supplied under this contract and shall cooperate with the School Food Authority, State Agency, and USDA in monitoring compliance with Buy American requirements, including any applicable limits on non- domestic purchases established by regulation or policy.

5. Bid Evaluation and Award

All bids submitted in response to this IFB, and in accordance with the instructions and restrictions outlined in these Standard Terms and Conditions and Distributor Bid Certification and Agreement documents will receive initial consideration for award. However, this initial consideration does not mean the bid has been deemed qualified. Any bid may be disqualified at any point during the evaluation process if it fails to meet any other requirements or conditions stated elsewhere in the bid request.

The SFA reserves the right to waive minor informalities or technical defects that do not affect price, quality, or fairness of the competitive process. The SFA may reject any or all bids if such action is determined to be in the best interest of the program. Awards will be made to the lowest responsive and responsible bidder(s) based on the specifications and evaluation criteria published in this solicitation. The SFA may make awards on an item-by-item basis, by group, or in the aggregate, provided that the method of award is stated in this solicitation and applied consistently.

This solicitation is being conducted using the sealed bid (formal advertising) method of procurement, as defined at 2 CFR 200.320(b)(1). Bids shall be publicly solicited and a firm fixed price contract (either lump sum or unit price) will be awarded to the responsible bidder whose bid, conforming to all material terms and conditions of the solicitation, is the lowest in price. Bids will be evaluated solely on the criteria set forth in this IFB, and no bid may be withdrawn after the public opening without the consent of the SFA for the period specified in this solicitation.

6. Substitutions

The SFA will not accept any substitutes after item(s) have been awarded as specified, unless such substitutions are deemed to be in the best interest of the SFA, and unless prior agreements have been reached and reduced to writing regarding such substitutions. Substituting without the prior approval of the SFA will constitute a breach of contract by the vendor which may result in the initiation of actions covered in the Standard Terms and Conditions document entitled: "Remedies for Non-Performance of Contract; and Contract Termination" and the associated financial impacts attached thereto, and may jeopardize any future business from the SFA.

7. Deviations from Item Specification or Standard Terms and Contract

Any and all limitations, expectations, qualifications, special conditions, or deviations from these Standard Terms and Conditions or any of the Item Specifications, including the offering of any alternate to the "approved brand and/or model" (where identified) must be clearly noted in detail by the distributor at the time of submission of the bid. The absence of such limitations, exceptions, qualifications, special conditions, or deviations being submitted in writing with the distributor's response will hold the distributor accountable to the SFA to perform in strict accordance with all these Standard Terms and Conditions and all the item specifications as written, including any such limitations exceptions, qualifications, special conditions, or deviations with the bid response may place the distributor at a competitive disadvantage or otherwise prevent the SFA from considering the affected items(s).

Any deviation from any of the item specifications, including the delivery of any product other than the specific brand of the product awarded, will be grounds for rejection of the product(s) when delivered, and will expose the vendor to the remedies identified in the Standard Terms and Conditions document entitled "Remedies for Non Performance of Contract, and Contract Termination" and may jeopardize future business from the SFA.

8. Contract and Purchase Order Requirements

A response to the IFB is an offer to contract with the SFA based upon the item specifications and the Standard Terms and Conditions contained in the IFB. Offers do not become contracts unless and until they are both accepted by the SFA through the Distributor Bid Certification and Agreement, and put into effect by the issuance of a purchase order(s) signed by an authorized representative of the SFA.

This contract shall collectively include

- A. the Standard Terms and Conditions and the Item Specifications included in the IFB and any subsequent addenda thereto,
- B. the distributor's signed Bid Certification and Agreement and any subsequent addenda thereto, and
- C. the distributor's entire response to the IFB.
- D. All binding agreements should be submitted as part of the bid packet. The contract shall be interpreted by and governed under the laws of the state of North Carolina.

9. Net Off Invoice Requirement for Commodity Processing

The awarded distributor shall accommodate a net off invoice process for all applicable USDA Foods/commodity processing transactions under the National School Lunch Program. All costs billed to the School Food Authority's nonprofit school food service account shall be net of all discounts, rebates, and applicable credits, including but not limited to USDA Foods value pass-through and other commodity processing credits, and such benefits shall accrue solely to the School Food Authority. Each invoice shall clearly identify, as separate line items, the gross product cost, the USDA Foods or other applicable credits applied (with a brief description of the nature of each credit), and the resulting net amount due. This requirement is intended to comply with federal procurement standards at 2 CFR 200.318-.326 and 7 CFR 210.21. Upon request, the distributor shall provide supporting documentation sufficient for the School Food Authority, NCDPI, and other oversight entities to verify that all discounts, rebates, and applicable credits have been properly applied and returned to the nonprofit school food service account.

Commodity processing and value pass-through under this contract shall comply with the requirements of 7 CFR part 250, including Subpart C (Processing of Donated Foods) and applicable contract provisions and crediting requirements in 7 CFR 250.30 and 7 CFR 250.53. The net off invoice arrangement specified in this section shall operate as an approved value pass-through (indirect discount) system, under which the value of USDA Foods contained in approved end products is credited on the distributor's invoice in an amount at least equal to the USDA-established value, and all such credits accrue solely to the School Food Authority. The distributor and any processors or suppliers involved shall ensure that the full value of USDA Foods diverted for processing is tracked and returned to the SFA in accordance with 7 CFR part 250 and related USDA guidance.

10. Invoices, Packing Lists and Payment Conditions

Packing lists or other suitable shipping documents must accompany each shipment and must identify

- A. the name and address of the vendor,
- B. the name and address or delivery location of the receiving entity,
- C. the purchase order number, and
- D. detailed descriptive information identifying the item(s) delivered, including quantity, item number, product code, item description, number of containers, etc.

All invoices must reflect the

- A. the name and address of the vendor,
- B. the name and address or delivery locations of the receiving entity,
- C. the appropriate purchase order number, and

- D. detailed descriptive information identifying the item(s) delivered, including quantity, item number, product code, item description, etc., and must include a properly signed copy of the delivery receipt.

Invoices must be mailed directly to the SFA.

The SFA will not be held responsible for any products delivered or invoiced without a valid current purchase order number.

Notwithstanding the above, the payments stated on each individual purchase order will be the controlling factor in the determination of payment terms. Each invoice should include the vendor's normal payment terms in the event that any purchase order fails to address the subject.

In any case, payment will be made only after satisfactory delivery and acceptance of merchandise in good order, including the necessary documentation indicated above, and only after receipt of a correct invoice for the vendor, included the necessary information indicated above.

At the option of the SFA, invoices with incorrect prices or other errors or inconsistencies will not be paid until corrected, whether by credit memo(s) or issuance of a corrected invoice. At the option of the SFA, invoices may be corrected upon receipt and payment may be made based upon their corrections.

#### **11. Records Retention Requirements**

The contractor shall maintain all records, books, documents, and other evidence pertinent to this contract and to the goods and services provided hereunder in accordance with 2 CFR 200.334–200.337 and 7 CFR 210.21(b). Such records shall, at a minimum, include documentation of invoices, discounts, rebates, credits, delivery records, product origin (for Buy American compliance), and any other information necessary to support the charges billed to the SFA. These records shall be retained for a period of three (3) years after the SFA makes final payment under this contract; if any audit, claim, or litigation is initiated during the three-year period, records shall be retained until all such matters are fully resolved. The SFA, the North Carolina Department of Public Instruction, the U.S. Department of Agriculture, the Comptroller General of the United States, and any of their duly authorized representatives shall have the right of access to any of the contractor's pertinent records for the purposes of audit, examination, and copying.

#### **12. Contract Administration and Performance Monitoring**

The SFA shall maintain oversight to ensure that the contractor performs in accordance with the terms, conditions, and specifications of this contract, as required by 2 CFR 200.318(b). Oversight activities may include, but are not limited to, periodic review of invoices and supporting documentation to verify correct pricing and the application of all required discounts, rebates, and credits; on-site delivery inspections; product quality and specification checks; review of delivery schedules and fill rates; and periodic evaluation of customer service and responsiveness. The contractor shall cooperate fully with

the SFA in all monitoring activities and shall provide access to all records and documentation necessary for the SFA, State Agency, USDA, or auditors to verify contract compliance.

13. Remedies for Non-Performance of Contract and Termination of Contract

If the vendor cannot comply with the terms and conditions in fulfilling its contract as anticipated, the vendor must supply the same products or services contracted from other sources at the contract price. The vendor's delay in the above will constitute the vendor's material breach of contract, whereupon the SFA may terminate the vendor's contract for cause as provided by the remainder of this section.

Unless this contract is extended by mutual agreement of the parties beyond the expiration of the contract time period as stated on the Distributor Bid Certification and Acceptance document, this contract shall terminate upon the expiration of the contract term as stated.

If any delay or failure of performance is caused by a Force Majeure event as described in the Standard Terms and Conditions document entitled "Force Majeure", the SFA may, in its sole discretion, terminate this contract in whole or part, provided such termination follows the remaining requirements of this section.

Except as otherwise provided within the Standard 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 this contract through no fault of the terminating party; provided that no such terminations may be implemented unless and until the other party is given

- A. At least thirty (30) days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and
- B. An opportunity for consultations 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.

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

- A. the vendor's failure to adhere to any of the provisions of the Standard Terms and Conditions of this IFB,
- B. the vendor delivering any product(s) that fail to meet the item specifications included in this IFB related to the awarded product(s),
- C. the vendor delivering any substitution(s) of product(s) different than those originally proposed and awarded without the prior written approval of the SFA,
- D. the vendor's failure to meet the required delivery schedules as identified in the contract documents, or
- E. the vendor's violation of any other provision contained within these Standard Terms and Conditions or any attachment thereto which provides for contract termination as a remedy.

Notwithstanding anything contained in this section, in the event of the vendor's breach of any provision in this contract, the SFA reserves the right to enforce the performance of this contract in any

manner prescribed by law or deemed to be in the best interest of its members, 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 SFA elects to purchase other products from other sources, the SFA will invoice the vendor for any increased costs to the SFA, and the vendor agrees, by submission of a bid response, to promptly pay any such charges invoiced.

In the event the SFA terminates this contract, in whole or in part, for any reason provided for within the contract, the SFA reserves the right to award the canceled contract, or any portion thereof, to the next lowest or most responsible distributor as deems such award to be in the best interest of the SFA.

Any contract termination resulting from any cause other than a Force Majeure event will be deemed a valid reason for not considering any future bid from the defaulting vendor.

In the performance of this contract, time is of the essence and these Standard Terms and Conditions are of the essence.

#### 14. Force Majeure Consideration

The term Force Majeure shall include, but is not limited to, governmental restraints or decrees, provided they affect all companies in the vendor's industry equally and are not actions taken solely against the 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.

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. The party seeking relief due to Force Majeure will be required to promptly notify the other party in writing, citing the details of the Force Majeure event, and 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.

Delay or failure of performance, by either party to this contract, caused solely by the Force Majeure event shall be excused 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.

The SFA will not be responsible for any costs incurred by the vendor because of the Force Majeure event unless the SFA has requested, in writing, that the vendor incur such costs in connection with any delay or work stoppage caused by the Force Majeure event, and the SFA has agreed in writing to incur such additional costs.

Notwithstanding any other provision of this section, in the event the vendor's performance of its obligations under this contract is delayed or stopped by a Force Majeure event, the SFA shall have the option to terminate this contract in accordance with the Standard 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 SFA’s rights as provided elsewhere in this contract.

15. Venue

This agreement will be construed and governed according to the laws of the state of North Carolina. Both parties agree that venue for any litigation arising from this contract shall lie in Mecklenburg County, North Carolina.

16. Waiver

No claims or rights arising out of a breach of the 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.

17. 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 other party give a written assurance of his intent to perform. In the event that a demand is made and no assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.

18. Extension Clause

This contract may be extended annually for up to four (4) additional years from the expiration of the contract period, unless sooner terminated in accordance with the provision of this contract, if the vendor and the SFA mutually agree, and no increases in costs are incurred, and the maximum allowable escalation price is capped by the annual national Consumer Price Index, *Cost of Food Away from Home*, increase.

19. Regulatory Compliance

The following provisions are included to meet the applicable contract requirements of 2 CFR 200.326 and Appendix II and 7 CFR 210.16 and 210.21 for contracts under federal awards.

- A. The distributor and SFA mutually agree to comply with all applicable standards, orders or requirements issued pursuant to Section 306 of the Clean Air Act (42 USC 1857 [h]), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 117389 and Environmental Protection Agency regulations (40 CFR Part 15). Any violations thereof shall be reported to the Administrator for Enforcement or other appropriate authority. Each party shall not be responsible to the other for acts beyond its control or acts caused by the negligence of the other party.
- B. The distributor agrees to comply with all mandatory standards and policies relating to energy efficiency as cited in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94 – 163).
- C. The distributor shall comply with Executive Order 11246, entitled Equal Employment Opportunity, as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations, 41 CFR Part 60.

- D. The distributor shall comply with the following civil rights laws as amended: Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title 7 CFR parts 15, 15a and 15b; the Americans with Disabilities Act; and FNS Instruction 113 – 6, “Civil Rights Compliance and Enforcement in School Nutrition Programs”.
- E. The distributor shall comply with the “Buy American” provision for contracts that involve the purchase of food and/or beverages as per 7 CFR part 250.
- F. The distributor shall comply with the provisions of the Consumer Product Safety Act.
- G. The distributor shall complete and sign the *Certification of Independent Price Determination* form, *Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion* form; and *Disclosure Form to report Lobbying* and shall include these documents as part of the agreement. (see attachments)
- H. The distributor shall abide by all applicable State and Federal laws and policies of the State Board of Education when providing services under this contract.
- I. Allowable costs will be paid from the nonprofit school food service account to the contractor net of all discounts, rebates and other applicable credits accruing to or received by the contractor or any assignee under the contract, to the extent those credits are allocable to the allowable portion of the costs billed to the SFA.

## 20. Assurance of Non-Collusion

By signing this bid, the distributor assures that, to the best of his/her knowledge:

- A. Neither the distributor nor any business entity represented by the distributor has received compensation for participation in the preparation of the items specifications or the Standard Terms and Conditions related to this IFB.
- B. This bid has been arrived at independently and is submitted without collusion with any other distributor, 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 any distributor an unfair advantage over any other distributor with respect to this IFB.
- C. The distributor has not accepted, offered, conferred or agreed to confer, and will not in the future accept, offer confer, or agree to confer any benefit or anything of value to any person or entity related to this bid, any recommendations, decision, 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.
- D. Neither the distributor, nor any business entity represented by the bidder, nor anyone acting for such business entity, has violated the Federal Antitrust Laws or the antitrust laws of the state of North Carolina with regard to this bid, and this bid has not been knowingly disclosed, and will not be knowingly disclosed to another distributor, competitor, or potential competitor prior to the opening of bids.
- E. No attempt has been or will be made to induce any other person or entity to submit or to not submit a bid.

## 21. Assurances Regarding Legal and Ethical Matters

By signing this bid, the distributor assures that:

- A. he/she has read and understands all the Standard 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,
- B. the distributor has noted any and all relationships that might be conflicts of interest and included, such information with his/her response,
- C. the bid submitted conforms with all item specifications, these Standard Terms and Conditions and any other instructions, requirements, or schedules outlined or included in this IFB,
- D. 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 SFA at the proposed price and in accordance with the item specifications and the terms and conditions contained in the IFB,
- E. the offering identity 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,
- F. the offering entity has a high degree of integrity and business ethics, and a satisfactory record of performances and has not been notified by any local, state or federal agency with competent jurisdiction that its standing in any matters whatsoever would preclude it from participating in this bid, it would in no other way whatsoever be disqualified to propose or receive any award or contract related to this bid and the distributor will comply with any reasonable request from the SFA to supply any information sufficient to substantiate the proposing entity's ability to meet these minimum standards,
- G. concerning paragraph (F) 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 bod, recognizing that the distributor'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 distributor to removal from all procurement lists and possible criminal prosecution,
- H. the offering entity has obtained and will continue to maintain during the entire term of this contract, all permits, approvals or licensed necessary for lawful performance of its obligations under this contract,
- I. the prices, prompt payment discount terms, delivery terms, distribution allowances, and the quality and/or performance of the products offered in in the bid are and will remain the same or better than those offered to the vendor's most favored customer under equivalent circumstances,
- J. 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 SFA and its members harmless against any claims for infringement of any copyrights, patents or other infringements related to its activities under this contract,
- K. the offering entity will maintain, at the offering entity's expense, any insurance necessary to protect the SFA 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, injure, death or loss as described or as otherwise provided for by law,

- L. neither the SFA 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 SFA declares the offering entity in default,
- M. 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.
- N. Distributors must comply with the State of North Carolina Conflict of Interest requirement as defined in General Statutes, Chapter 14-234.

## 22. Organizational and Personal Conflict of Interest; Gifts and Gratuities

The SFA maintains written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award, and administration of contracts in accordance with 2 CFR 200.318(c)(1)–(2). No employee, officer, or agent of the SFA shall participate in the selection, award, or administration of this contract if they have a real or apparent conflict of interest, including any financial or other interest in, or personal or family relationship with, a contractor or prospective contractor. Officers, employees, and agents of the SFA shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts, except as allowed under the SFAs written standards of conduct and applicable state law. The contractor certifies that it has disclosed, and shall continue to disclose for the term of the contract, any potential organizational conflict of interest or relationship that could be perceived as a conflict under 2 CFR 200.318(c) and N.C. Gen. Stat. 14-234.

## 23. Bid Acceptance

The period for acceptance of this bid will be thirty (30) calendar days unless a different period is indicated by the distributor.

## 24. Protest Procedure

Protests of awards exceeding \$10,000 in value must be submitted to the issuing Agency at the address given on this document. Protests must be received in this office within 15 calendar days from the date of the contract award and provide specific reasons and any supporting documentation for the protest.

## 25. Iran Divestment Act

All contractors must agree to abide with the Iran Divestment Act Certification, N.C.G.S 147-86.59 which requires:

- A. Certification for bids or contracts with the State of North Carolina, a North Carolina local government, or any other political subdivision of the State of North Carolina. The certification is required when a bid is submitted, a contract is entered into and when a contract is renewed:
  - 1. When a bid is submitted
  - 2. When a contract is entered into (if the certification was not already made when the vendor made its bid)

3. When a contract is renewed or assigned
- B. Contractors with the State, a North Carolina local government, or any other political subdivision of the State of North Carolina must not utilize any subcontractor found on the State Treasurer's final Divestment List. The State Treasurer's Final Divestment List can be found on the State Treasurer's website at the address [www.nctreasurer.com/iran](http://www.nctreasurer.com/iran) and will be updated every 180 days.

The Iran divestment Act of 2015 may be found at:

[http://www.ncga.state.nc.us/enactedlegislation/statutes/pdf/byarticle/chapter\\_147/article\\_6e.pdf](http://www.ncga.state.nc.us/enactedlegislation/statutes/pdf/byarticle/chapter_147/article_6e.pdf)

The act's requirements use the term "State Agency". G.S. 147-86.57(7) provides that in the Act, the term "State Agency" includes not only State departments, boards, commissions, executive departments, officers and institutions, but also "any political subdivision of the State" such as Local Government Unit.

## 26. Escalation/De-Escalation Clause

Fixed prices shall remain in effect for the duration of the initial contract year. An economic price adjustment (escalation or de-escalation) may be permitted only as expressly outlined in this solicitation and only when supported by an independently published, publicly verifiable market index approved by the North Carolina Department of Public Instruction (NCDPI), School Nutrition Division. Acceptable indices include, but are not limited to, USDA Market News reports or Producer Price Index (PPI) categories published by the U.S. Bureau of Labor Statistics. Adjustments based solely on manufacturer, distributor, or supplier pricing will not be accepted.

Any economic price adjustment must reflect both increases and decreases in the approved index. The adjustment shall be calculated using the percentage change in the selected index between the base period identified in the contract and the most recent published index available at the time of the request. All calculations must be transparent, objective, and fully documented.

Price adjustments may not take effect until the documented change in the approved index has occurred. The contractor shall provide written notification of any requested adjustment no fewer than thirty (30) calendar days prior to the proposed effective date. Requests must include: (1) the specific index used, (2) the base index value, (3) the current index value, and (4) the calculation demonstrating the percentage change.

Economic price adjustments may occur no more than once per contract year and shall take effect on the date specified in the awarded contract, provided all required documentation has been submitted and approved. All requests must be submitted to the School Nutrition Director or Child Nutrition Supervisor at least ten (10) calendar days prior to the scheduled adjustment date.

The School Food Authority (SFA) reserves the right to approve, deny, or request clarification of any proposed adjustment. No price change shall be effective without written approval from the SFA. Failure to comply with the documentation or notification requirements will result in the adjustment being denied.

All terms of this clause shall apply equally to escalation and de-escalation.

## 27. Lobbying Certification and Disclosure

A Lobbying Certification and Disclosure must be completed for all bids \$100,000 and over. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352): Vendors that apply or bid for an award exceeding \$100,000

must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. **\*\*Please see and complete Lobbying Certification attachment and include it in the bid.\*\***

28. HUB (Historically Underutilized Business) STATEMENT

The SFA and contractor shall take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible, in accordance with 2 CFR 200.321.

Positive offers include:

1. Placing qualified small and minority businesses, women's business enterprises and labor surplus firms are solicited whenever they are potential sources;
2. Assuring that small and minority businesses, women's business enterprises and labor surplus firms are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, women's business enterprises and labor surplus firms;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, women's business enterprises and labor surplus firms;
5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce;  
**\*\*Please see and complete Historically Underutilized Business (HUB) certification attachment and include it in the bid.\*\***

29. Equal Employment Opportunity Compliance 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, religion, sex, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotope, American Sign Language, etc.) should contact the State or local Agency that administers the program or contact USDA through the Telecommunications Relay Service at 711 (voice and TTY). Additionally, program information may be made available in languages other than English. USDA is an equal opportunity provider and employer. (Equal Employment Opportunity.

Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246 Relating to Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”)

### 30. Clean Air/Clean Water Statement

Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)) Clean Air and Water Certification. Vendor certifies that none of the facilities it uses to produce goods provided under the contract are on the Environmental Protection Authority (EPA) List of Violating Facilities. Vendor will immediately notify the School Food Authority (SFA) of the receipt of any communication indicating that any of the vendor’s facilities are under consideration to be listed on the EPA List of Violating Facilities. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended: Contracts and sub grants 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).

### 31. Civil Rights Statement

Sugar Creek Charter School’s Child Nutrition Program hereby agrees that it will comply with:

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.);
2. Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.);
3. Section 504 of the rehabilitation Act of 1973 (29 U.S.C. 794);
4. Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.);
5. Title II and Title III of the Americans with Disabilities Act (ADA) of 1990 as amended by the ADA Amendment Act of 2008 (42 U.S.C. 12131-12189);
6. Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency”. (August 11, 2000);
7. All provisions required by the implement regulations of the Department of Agriculture (USDA) (7 CFR Part 15 et seq.);
8. Department of Justice Enforcement Guidelines (28 CFR Parts 35, 42, and 50.3);
9. Food and Nutrition Service (FNS) directives and guidelines to the effect that, no person shall, on the grounds of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under any program or activity for which the Program applicant receives Federal financial assistance from USDA; and hereby gives assurance that it will immediately take measures necessary to effectuate this Agreement.
10. The USDA non-discrimination statement that in accordance with Federal Civil rights law and U.S. Department of Agriculture (USDA) civil rights policies, the USDA, it Agencies, offices, and

employees, and institutions participating in or administering USDA programs are 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, in any program or activity conducted or funded by USDA (not all bases apply to all programs).

32. Jessica Lunsford Act

As required by N.C.G.S. 115C-332.1, all contractors, subcontractors, consultants, sub-consultants, and vendors shall conduct prior to the start of service and annually thereafter a review of the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry for all employees who will provide services under this contract that involve direct interaction with Sugar Creek Charter School students. For convenience only, all of the required registry checks may be completed at no cost by accessing the United States Department of Justice Sex Offender Public website at <http://www.nsopw.gov/>.

Any employee of the contractor, subcontractor, consultant, sub-consultant, or vendor found to be registered on any of the lists identified herein shall not perform any work under this contract and shall not be permitted to enter property owned by Sugar Creek Charter School. Failure to comply may result in legal action and termination of the contract for default.

***\*\*Please see and complete Lunsford Act Certification attachment and include it in the bid.\*\****

33. Questions regarding Request for Bid

Questions or requests for additional information concerning this bid or the specifications should be addressed to:

Sugar Creek Charter School

Attn: Janet Stern, Supervisor Child Nutrition Program

4101 North Tryon Street

Charlotte, NC 28206

Stern.janet@thesugarcreek.org



**RETURN THIS DOCUMENT IN SEALED BID PACKET**

**CERTIFICATION FOR CONTRACTS, GRANTS, LOANS AND COOPERATIVE AGREEMENTS**

**LOBBYING**

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

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress about this Federal contract, grant, loan or cooperative agreement the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants and contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

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Company Name (Please Print)

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Signature of Authorized Representative

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Date



**RETURN THIS DOCUMENT IN SEALED BID PACKET**

**HISTORICALLY UNDERUTILIZED BUSINESS (HUB) CERTIFICATION**

Companies submitting bids that have been certified by the North Carolina Department of Administration as Historically Underutilized business (HUB) entities are encouraged to indicate their HUB status when responding to the Invitation for Bid (IFB).

I certify that my company has been certified by the North Carolina Department of Administration as a Historically Underutilized Business H(HUB), and I have attached a copy of our HUB certification to this form. (Required documentation for recognition as a HUB).

My company has NOT been certified by North Carolina as a Historically Underutilized Business (HUB).

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Company Name (Please Print)

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Signature of Authorized Representative

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Date



**RETURN THIS DOCUMENT IN SEALED BID PACKET**

NC LUNS福德 ACT N.C. GENERAL STATUTE 14-208.18

The Contractor acknowledges that N.C. General Statute 14-208.18 prohibits anyone required to register as a sex offender under Article 27A of Chapter 14 of the General Statutes from knowingly being on the premises of any school. This prohibition applies to persons required to register under Article 27A who have committed any offense in Article 7A of Chapter 14 or any offense where the victim of the offense was under the age of 16 years at the time of the offense.

**CRIMINAL BACKGROUND CHECKS:** The Contractor shall conduct criminal background checks on each of its employees who, pursuant to this Agreement, engage in any services on a Sugar Creek Charter School property. The Contractor shall provide documentation that criminal background checks were conducted on each of its employees prior to hiring and shall refuse employment to any person convicted of a felony or any other crime, whether misdemeanor or felony, that indicates the person poses a threat to the physical safety of students, school personnel or others. Such check shall include an annual check of the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry. Contractor shall not assign any employee or agent to provide services pursuant to this contract if (1) said worker appears on any of the listed registries; (2) said worker has been convicted of a felony; (3) said worker has been convicted of any crime, whether misdemeanor or felony, involving sex, violence, or drugs; or (4) said worker has engaged in any crime or conduct indicating that the worker may pose a threat to the safety or well-being of student or school personnel. Each Sugar Creek Charter School reserves the right to prohibit any individual employee of Contractor from providing services on School property or at any School events if the School (s) determines, in its sole discretion, that such employee poses a threat to the safety or well-being of students, school personnel or others. By signing this form, the Vendor agrees they conduct criminal background checks and do not hire a person convicted of a felony or any other crime, whether misdemeanor or felony, that indicates the person poses a threat to the physical safety of students, school personnel or others. Also that the contractor conducts an annual check of the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry for persons employed by the company.

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Company Name (Please Print)

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Signature of Authorized Representative

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Date



**RETURN THIS DOCUMENT IN SEALED BID PACKET**

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

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

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
  - a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - b. have not within a three-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - c. are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
  - d. have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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Company Name (Please Print)

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Signature of Authorized Representative

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Date

### Instructions for Certification

- 1) By signing and submitting this form, the prospective primary participant is providing the certification set out on the reverse side in accordance with these instructions.
- 2) The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out on this form. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
- 3) The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
- 4) The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- 5) The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
- 6) The prospective primary participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- 7) The prospective primary participant further agrees by submitting this form that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- 8) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-Procurement List.
- 9) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- 10) Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.