

# **Request for Proposal 2026-2027**

## **GENERAL INFORMATION**

### **A. Intent**

This Request for Proposal (RFP) is for the purpose of obtaining quotes and ultimately entering into a contract to provide School Cafeteria Hood System Cleaning and Bi Annual Safety Inspections for the Cleveland County Schools nonprofit Child Nutrition Program, referred to as the School Food Authority (SFA).

The contract will be between the offeror (vendor) and the SFA. The offeror shall provide assurances that all operations addressed in the RFP will be conducted in a manner that is consistent with the goals of the SFA and the SFA's Child Nutrition.

### **B. Procurement Method**

A competitive bidding process will be used to procure products and services from this offeror. All procurement transactions shall be conducted in a manner that provides maximum free and open competition consistent with Federal regulations as defined in 7 CFR 3016.

**D. Bid Submission**

1. Bids will be received until the deadline indicated in the Bid Certification.

Bids may be submitted by U.S. Mail, common carrier, or other courier or delivery service, hand delivery, fax or email.

Bids should be addressed and delivered to:

Cleveland County Schools  
Child Nutrition Programs  
400 West Marion Street  
Shelby, North Carolina 28150  
Attention: Jamie Currier, Director

**BID DUE DATE AND TIME: Feb. 16, 2026 at 9:00am**  
**Late bids will not be accepted.**

**Low Bid will be awarded to the most responsive and responsible vendor. Historical data will be used to determine the most responsive and responsible bidder.**

Bids received after the deadline will not be accepted for consideration, and will be returned to the offeror unopened

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

Offerors are welcome to attend the bid opening at the date and time indicated in the Bid Certification, but offeror presence is not required, and no weight or other consideration toward any award decision will be given to any offeror's attendance or absence at the bid opening. A summary report of the bids received will be available to any interested party after the Contract is awarded upon WRITTEN request. The form and content of the bid summary will be at the sole discretion of the SFA.

2. The SFA reserves the right to reject any and/or all bids if deemed to be in the best interest of the SFA. The SFA reserves the right to reissue the RFP.
3. The award shall be made to the qualified and responsible offeror whose bid is most responsive to this solicitation. A responsible offeror is a provider whose financial, technical, operational and other resources indicate an ability to provide the products as requested on this RFP and who is able to perform the services required by this solicitation and whose responses best meet the criteria contained throughout the RFP.  
If clarification is needed, address a written request to:

Jamie Currier  
Child Nutrition Director  
Cleveland County Schools  
400 West Marion Street  
Shelby, North Carolina 28150

## **E. Late Bid**

Any bid received after the exact time specified for receipt will not be accepted or considered.

## **F. Pre-Award Clarification**

The SFA reserves the right to conduct final discussions and negotiations with the offeror recommended by the Evaluation Committee prior to awarding the Contract. The purpose of these discussions shall be to clarify and assure full understanding of any issue contained in the bid. In conducting these discussions, there shall be no disclosure of any information derived from bids by competing offerors.

## **G. Withdrawal or Modification of Bid**

Subject to the restrictions discussed below, the SFA will consider a WRITTEN request from any offeror that the bid be allowed to be withdrawn, but ONLY IN ITS ENTIRETY, and ONLY UNTIL THE DUE DATE AND TIME FOR BID SUBMISSION as stated in the Bid Certification included with this RFP. A representative of the offering entity who is authorized to enter into contracts on behalf of the offering entity must manually sign any request for the withdrawal of any bid in ink, and the person signing the request must indicate his/her title along with his/her signature. No bid may be withdrawn after the date and time that bids are due as specified in the Bid Certification. Only bids that have been submitted consistent with the instructions relating to packaging and labeling of the bid will be considered for withdrawal.

If there is any question in the mind of the SFA regarding the identity of the bid or the identity of the offer relation to any request for the withdrawal of any bid, the SFA will refuse to allow the withdrawal of the bid. Withdrawal of any bid allowed by the SFA will require the completion and signature of a written receipt by the offeror's representative satisfactory to the SFA before the bid will be released. The decision of the SFA in relation to any matters concerning bid withdrawal will be final.

If an offeror requests to withdraw a bid and the SFA allows the withdrawal of the bid, the offeror may resubmit the bid, or submit a new bid, up until the due date and time for bid submission as stated in the Bid Certification included with this IFB, provided any new submission meets all the qualifications of bid submission included in these General Terms and Conditions.

If an offeror resubmits a bid that was withdrawn and makes changes to any document in the bid package, an authorized agent of the offering entity must initial all alterations made to any bid document.

All bids in possession of the SFA at the time bids are due shall be deemed final, conclusive, and irrevocable, and no bid shall be subject to withdrawal, amendment, or correction after the due date and time for bid submission as stated in the Bid Certification included with this RFP.

## **H. Statement of Inclusion/Applicability**

The general Terms and Conditions are applicable to all RFPs issued by this SFA and by this inclusion, they become part of the any Contract which is awarded, or purchase order which is issued in association with the RFP.

## **I. Conflict of Interest**

The SFA's officers, employees or agents shall neither solicit nor accept gratuities, favors, nor anything of monetary value from contractors or potential contractors. To the extent permissible under Federal and State laws, rules or regulations, such standards shall provide for appropriate penalties, sanctions or other disciplinary actions to be applied for violations of such standards.

## J. Final Contract

**The submitted RFP, including all attachments and all documents submitted by the offeror, will become the official Contract when approved, awarded and signed.**

## STANDARD TERMS AND CONDITIONS

### A. Scope and Purpose

It is the intent of the SFA to contract with an interested party or parties for the purchase of Annual Hood System Cleanings and Bi Annual Safety Inspections at 29 school cafeterias that fall within Federal regulations and State statutes that will be provided at an economical price for the SFA.

The section titles contained in this General 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.

Unless otherwise stated, any listing of factors or criteria in this document does not constitute an order of preference or importance.

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

- (1) this General Terms and Conditions document, including any attachments and or amendments thereto,
- (2) the Item Specifications included in the RFP and any subsequent addenda thereto, the offeror's signed Bid Certification, which must be completed, signed by an authorized representative of the offering entity, and returned with the offeror's response, along with this ENTIRE Terms and Conditions document and all other forms and information collection pages included with this RFP,
- (3) the offeror's response to the RFP,
- (4) the offeror's Notice of Award document, and
- (5) any additional terms, conditions, or instructions issued by the SFA.

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

### B. Contract Time Period

**Contract period:** The contract is intended to **begin on or about July 1, 2026 and continue until June 30, 2027**. At the option of Cleveland County Schools, this contract may be extended for four (4) additional one year periods. All changes MUST be agreed to in writing by both parties.

The time period for purchases covered by a Contract resulting from an award under this RFP is stated in the Bid Certification. The SFA reserves the right to award the Contract to a vendor for a longer initial term period than the time period stated in the Bid Certification if it is determined to be in the best interest of the SFA. Unless otherwise indicated in these General Terms and Conditions, all pricing will be firm throughout the entire contract period.

Upon mutual written agreement of both parties, this Contract may be extended beyond the expiration of the contract time period in accordance with the General terms and Conditions document entitled "Extension Clause."

The transfer, assignment, or subcontracting of contracts is prohibited, and the offeror agrees not to sell, assign, transfer, convey, or subcontract any portion of this contract resulting from this IFB without the prior written consent of the SFA.

### C. Addendum

In the event any changes to this RFP occur subsequent to the mailing or other delivery of the original RFP, 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 RFP or any previous addendum. Each addendum will be mailed to all entities that are known to have received a copy of this RFP. The SFA is the sole authority for the issuance of any addendum related to this RFP. 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 RFP.

Each addendum must be acknowledged on the acknowledgement form provided with the addendum. Any required acknowledgement form must be submitted along with the submission of any bid response.

## D. 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 of quality desired. If any conflict exists in the item specifications 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 regularly produced products 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 offeror 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 brand" specified, the offeror 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". These "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".

If the offeror fails to identify the manufacturer, brand, portion size, etc. for any item included in the bid, the SFA will assume the offeror is proposing **the exact brand/product and portion size identified in the specification**, and if awarded, the offeror will be required to furnish the **exact brand names, portion sizes, etc. as specified. Substitutions will not be allowed.**

The apparent silence of the specifications as to any detail or the apparent omission from any specification of a detailed description concerning any point shall be regarded as meaning that only the best communication practices shall prevail. 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 this IFB, please note it as part of your bid response.

### **General Specification Provisions:**

#### **1. Quantities**

Quantities reflected in this RFP are estimates 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 RFP, 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.

#### **2. Pricing**

**A FIRM bid for the entire year is required with no escalator clause. The total price per unit shall include transportation and delivery charges as fully prepaid by the supplier. This contract at the end of each year will be reviewed and if agreeable with the Child Nutrition Director and Purveyor, the contract may be extended for up to four years.**

Allowable costs will be paid from the nonprofit school food service account to the offerer/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 offeror/contractor agrees to fully disclose all discounts, rebates, allowances, and incentives received by the Company from its suppliers. If the offeror/contractor receives a discount, rebate, allowance, or incentive from any supplier, the offeror/contractor must disclose and return to Cleveland County Schools the full amount of the discount, rebate, or applicable credit that is received based on the purchases made on behalf of Cleveland County Schools. All discounts, rebates, allowances, and incentives must be returned to Cleveland County Schools. Allowable costs will be paid from the nonprofit school food service account to the offerer/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 offeror/contractor agrees to fully disclose all discounts, rebates, allowances, and incentives received by the Company from its suppliers. If the offeror/contractor receives a discount, rebate, allowance, or incentive from any supplier, the offeror/contractor must disclose and return to Cleveland County Schools.

District the full amount of the discount, rebate, or applicable credit that is received based on the purchases made on behalf of the School District. All discounts, rebates, allowances, and incentives must be returned to the School District during a mutually agreed upon timeframe that is beneficial to the School District.

during a mutually agreed upon timeframe that is beneficial to the School District.

### 3. Delivery, Product Specification and Transportation

#### Terms and Conditions

##### Delivery Schedule

All cleanings and safety inspections must be made as needed between the hours of 7:00 a.m. and 1:00 p.m. No Exceptions unless approved by the Director!! Service times are to be set as requested by the Director of Child Nutrition. In case of inclement weather forcing the cancellation of a school day, the vendor will be informed by the local news media

10. Monthly statements are to be sent to the Director of Child Nutrition, Cleveland County Schools Child Nutrition Office at 400 Marion Street, Shelby, North Carolina 28150. Statements are to be received by the FIFTH of the month following the month in which the purchase is made. For billing purposes, the month shall run from the 1st through the 31st. Statements shall be reviewed and inspected and will be paid by the next month.

FAILURE TO FOLLOW THIS SCHEDULE WILL RESULT IN DELAYED PAYMENT.

11. It is the policy of Cleveland County Schools to make payment by reconciling invoices with the statements.

Unless otherwise noted in these General 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 7:00 A.M. and 1 P.M. Monday through Friday, except holidays.

Unless otherwise noted in this RFP or in the Purchase Order, the offeror 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 fax, 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 General Terms and Conditions document entitled "Remedies for Non-Performance of Contract", and "Contract Termination" and the associated financial impacts attached thereto, as well as jeopardize any future business from the SFA.

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 products 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 RFP, 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.

### 4. Quality

Unless otherwise indicated in the RFP, 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 item(s) within (30) days of receipt at vendor's expense.

Material Safety Data Sheets (MSDS) on chemicals or any other products customarily requiring MSDS must be provided to the SFA with the first shipment to the SFA at the beginning of the contract period. Promptly and at no additional costs, the offeror will provide additional Materials Safety Data Sheets to the SFA upon request. Providing a web site access location to MSDS information is an acceptable alternative.

### 5. 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 evaluation 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 General Terms and Conditions of the RFP, 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 SFA shall have access to any supplier's place of business during normal business hours for the purpose of inspecting merchandise.

## **6. Warranties**

By submission of a bid, the offeror 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.

## **9. Buy American provision**

SFAs participating in the National School Lunch and School Breakfast programs in the contiguous United States are required to purchase, to the maximum extent practicable, domestic products for use in meals served under the programs. Regulations define "domestic products" as one that is produced in the United States and is processed in the United States, substantially using agricultural commodities that are produced in the United States. "Substantially" means over 51 percent of the final processed product consists of agricultural commodities that were grown domestically.

## **E. Bid Evaluation and Award**

All bids received in response to this RFP which are submitted in accordance with the instructions and restrictions contained in this General Terms and Conditions document entitled "Bid Preparation and Submission Procedures" will initially be considered for award; however, initial consideration of any bid will not constitute an assessment of its meeting the necessary qualifications, and any bid may be disqualified at any time during the process of evaluating bids for failure to meet any other terms or conditions contained anywhere else in the bid request.

The SFA reserves the right to waive any or all bid irregularities, formalities, or other technicalities, to be the sole and independent judge of quality and suitability of any products offered, and may accept or reject any bids in their entirety, or may reject any part of any bid without affecting the remainder of that bid, and may award the individual items included in the bid in any combination or any way to best serve the interests of its members as it perceives those interests to be in its sole discretion.

It is the policy of the SFA to purchase on the basis of low bid price. All bid items are subject to evaluation and approval by the SFA. In evaluating the bids received and determining the best value for the SFA, the SFA may consider any combination of the following criteria: (1) the purchase price; (2) the reputation of the vendor and of the vendor's goods and/or services; (3) the extent to which the goods and/or services meet the needs of the SFA; (4) the vendor's location, service, and delivery capabilities; (5) the vendor's past performance with the SFA; (6) student preferences; (7) the warranties offered and the vendor's warranty service history; (8) the probability of continuous availability of the goods and/or services offered; (9) the impact on the ability of the SFA to comply with any applicable laws or rules; (10) the total long-term cost to the SFA to acquire the vendor's goods and/or services; (11) packaging of the products and in some cases preference is given to a vendor who provides all the components relative to the complete package, and (12) any other relevant factor that a public or private entity could consider in selecting a vendor.

It is understood that the SFA may use all means at their collective disposal to evaluate the bids received on these criteria, and the final decision as to the best overall offer, both as to price and to suitability of the products and/of services offered to fit the needs of the SFA, will be made by the Child Nutrition Director, the SFA Purchasing Officer, the SFA Finance Officer and/or SFA designee.

The successful offeror(s) will be notified by "Notice(s) of Award" issued by the SFA.

The SFA reserves the right to require a performance bond as it is deemed necessary.

## **F. Substitutions**

#### **G. Deviations from Item Specification or General Terms and Conditions**

Any and all limitations, expectations, qualifications, special conditions, or deviations from these General 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 offeror 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 offeror's response will hold the offeror accountable to the SFA to perform in strict accordance with all these General 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 offeror at a competitive disadvantage or otherwise prevent the SFA from considering the affected item(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 this General Terms and Conditions document entitled "Remedies for Non-Performance of Contract, and Contract Termination" and may jeopardize future business from the SFA.

#### **H. Contract and Purchase Order Requirements**

A response to this RFP is an offer to contract with the SFA based upon the Item Specifications and the General Terms and Conditions contained in the IFB. Offers do not become Contracts unless and until they are both accepted by the SFA through an Award Notice to the offeror, 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 (1) the General Terms and Conditions and the Item Specifications included in the IFB and any subsequent addenda thereto, (2) the offeror's signed Bid Certification and any subsequent addenda thereto, (3) the offeror's entire response to the IFB, (4) the offeror's Notice of Award document, (5) and any additional terms, conditions, or instructions contained in each individual Purchase Order. 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.

#### **I. 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 (a) the name and address of the vendor, (b) the name and address or delivery location 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 from the vendor, including 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.

#### **J. Records Retention Requirements**

By signing this bid, the offeror understands that the SFA, 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.

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

The offeror must retain pertinent records identified by source, type, and category of beverages for a minimum of three years after the SFA 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 issues raised by the audit.

#### **K. 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 Bid Certification, this Contract shall terminate upon the expiration of the contract term as stated on the Bid Certification.

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 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 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 this contract through no fault of the terminating party; provided that no such termination may be implemented unless and until the other party is given 1) at least thirty (30) days written notice (delivered by certified mail, return receipt requested ) of intent to terminate, and 2) an opportunity for consultation with the terminating party, followed by a reasonable opportunity, of not more than ten (10) working days, to rectify the defects in products or performance, prior to termination.

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

- (1) the vendor's failure to adhere to any of the provisions of the General Terms and Conditions of this RFP,
- (2) the vendor delivering any product(s) that fail to meet the Item Specifications included in this RFP relating to the awarded product(s),
- (3) the vendor delivering any substitution(s) of product(s) different than those originally proposed and awarded without the prior written approval of the SFA,
- (4) the vendor's failure to meet the required delivery schedules as identified in the contract documents, or
- (5) the 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.

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 offeror as it 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 General Terms and Conditions are of the essence.

#### **L. 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 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 SFA's rights as provided elsewhere in this contract.

**M. 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 Cleveland County, North Carolina.

**N. 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.

**O. 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 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.

**P. 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 provisions 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.

**Q. Regulatory Compliance**

1. The offeror 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.
2. The offeror 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).
3. The offeror 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.
4. The offeror 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".
5. The offeror shall comply with the "Buy American" provision for Contracts that involve the purchase of food and/or beverages as per 7 CFR Part 250.
6. The offeror shall comply with the provisions of the Consumer Product Safety Act.
7. The offeror shall comply with all provisions of the Lunsford Act.
8. The offeror 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)
9. The offeror shall abide by all applicable State and Federal laws and policies of the State Board of Education when providing services under this Contract.

**R. Assurance of Non-Collusion**

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

- (1) Neither the offerer nor any business entity represented by the offerer has received compensation for participation in the preparation of the items specifications or the General Terms and Conditions related to this IFB,
- (2) This bid has been arrived at independently and is submitted without collusion with any other offerer, 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 offerer an unfair advantage over any other offerer with respect to this RRP.
- (3) The offerer 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 SFA or any of its members in connection with any information or submission 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,
- (4) Neither the offerer, 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 offerer, competitor, or potential competitor prior to the opening of bids.
- (5) No attempt has been or will be made to induce any other person or entity to submit or to not submit a bid.

#### **S. Assurances regarding Legal and Ethical Matters**

By signing this bid, the offerer assures that:

- (1) 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,
- (2) the offerer has noted any and all relationships that might be conflicts of interest and included such information with his/her bid response,
- (3) the bid submitted conforms with all item specification, these General Terms and Conditions, and any other instructions, requirements, or schedules outlined or included in this RFP,
- (4) if this bid is accepted, in whole or in part, the offering entity will furnish any item(s) awarded to them under this RFP to the SFA at the proposed price and in accordance with the item specifications and the terms and conditions contained in this IFB,
- (5) 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,
- (6) 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 offeror 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,
- (7) concerning paragraph (6) above, the offering entity has identified and disclosed in this written bid any and all known suspected matters that would disqualify it from participating in this bid or receiving any award or contract related to this bid, recognizing that the offer's failure to identify and disclose any such matters constitutes its affirmation that no such matters exist, and that failure to disclose in this bid any such matters which do exist is a material breach of contract which would void the submitted bid or any resulting contracts, and subject the offeror to removal from all procurement lists and possible criminal prosecution
- (8) 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,
- (9) the prices, prompt payment discount terms, delivery terms, distribution allowances, and the quality and/or performance of the products offered in the bid are and will remain the same or better than those offered to the vendor's most favored customer under equivalent circumstances,
- (10) 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,
- (11) 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, injury, death or loss as described or as otherwise provided for by law,
- (12) 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,
- (13) 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,
- (14) Offerors must comply with the State of North Carolina Conflict of Interest requirement as defined in General Statutes, Chapter 14-234.

#### **T. Bid Acceptance**

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

#### **U. Protest Procedure**

Protests of awards exceeding \$10,000 in value must be submitted to the issuing Agency at the address given on Page 2 of 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.

#### **V. Questions Regarding Request for Bid**

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

Cleveland County Schools  
Child Nutrition Programs  
400 West Marion Street  
Shelby, North Carolina 28150  
Attention: Jamie Currier, Director

#### ***Cleveland County Schools, Child Nutrition Programs***

**LUNSFORD ACT.** The 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 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 Vendor shall conduct criminal background checks on each of its employees who, pursuant to this Agreement, engage in any services on (name of SFA) property or at (name of SFA) events. The Vendor 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. Vendor 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. Cleveland County Schools reserves the right to prohibit any individual employee of Vendor from providing services on Cleveland County Schools property or at Cleveland County Schools events if Cleveland County Schools determines, in its sole discretion, that such employee poses a threat to the safety or well-being of students, school personnel or others.

Issued by the Child Nutrition Services Section, June 3, 2009

### USDA Nondiscrimination Statement

#### **SNAP and FDPIR State or local agencies, and their sub recipients, must post the following Nondiscrimination 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, 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 [Program Discrimination Complaint Form English](#) [ 409.6 kB ], [Program Discrimination Complaint Form Spanish](#) [ 389.3 kB ] and 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:

**mail:**

U.S. Department of Agriculture  
Office of the Assistant Secretary for Civil Rights  
1400 Independence Avenue, SW  
Washington, D.C. 20250-9410; or

**fax:**

(833) 256-1665 or (202) 690-7442; or

**email:**

[Program.Intake@usda.gov](mailto:Program.Intake@usda.gov)

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