

Bidder: \_\_\_\_\_

## Durham Public Schools

<p style="text-align: center;"><b>Durham Public Schools</b></p> <p><b>RFP# 179-2324-242-CNS_MGMT_SOFTWARE</b> <b>Attn: Tanita Nicholson</b> <b>511 Cleveland Street</b> <b>Durham, NC 27701</b></p>	<p><b>REQUEST FOR PROPOSALS NO:</b></p> <p><b>RFP# 179-2324-242-CNS_MGMT_SOFTWARE</b></p> <hr/> <p><b>Bid Opening DATE: 5/2/2024</b></p>
<p>Direct all inquiries concerning this RFP to:</p> <p>Durham Public Schools</p> <p>Attn: Tanita Nicholson</p> <p>All questions must be submitted <u>via email</u> no later <b>2:00 pm on 4/9/2024</b></p>	<p>Contract Type: <u>Open Market, Purchase</u> using various funds; when using Federal Funds Durham Public Schools will follow all Federal guidelines.</p>
<p>Email: <a href="mailto:Dist.Purchasing@dpsnc.net">Dist.Purchasing@dpsnc.net</a></p>	<p>Using Agency Name:</p> <p style="text-align: center;">Durham Public Schools</p>

### Bids will be publicly opened on:

**NOTE:** Questions concerning the specifications in this Request for Proposals will be received until date and time listed above. **ALL QUESTIONS MUST BE SUBMITTED IN WRITING, EITHER BY EMAIL or TO THE ADDRESS LISTED ABOVE. NO QUESTIONS** will be received by telephone. Questions received after the date and time listed above will not be considered. A summary of all questions and answers will be posted on the Interactive Purchasing System as an addendum, located under the RFP # being modified. It is the OFFEROR'S responsibility to assure that all addenda have been reviewed and, if need be, signed and returned.

### **NOTICE TO BIDDERS**

Sealed Proposals subject to the conditions made a part hereof, will be received until **1:00 pm 5/2/2024** for furnishing and delivering the commodity/services described herein and then publicly opened.

Bids submitted via telegraph, facsimile (FAX) machine, telephone and electronic means, including but not limited to email, in response to this Request for Proposals will not be acceptable. Bids are subject to rejection unless submitted on this form.

Please submit three (3) hard copies and one (1) copy via flash drive of your proposal. One copy must be marked original.

**EXECUTION**

In compliance with this Request for Proposals, and subject to all the conditions herein, the undersigned Vendor offers and agrees to furnish and deliver any or all items upon which prices are bid, at the prices set opposite each item within the time specified herein. By executing this proposal, the undersigned Vendor certifies that this proposal is submitted competitively and without collusion (G.S. 143-54), that none of its officers, directors, or owners of an unincorporated business entity has been convicted of any violations of Chapter 78A of the General Statutes, the Securities Act of 1933, or the Securities Exchange Act of 1934 (G.S. 143-59.2), and that it is not an ineligible Vendor as set forth in G.S. 143-59.1. False certification is a Class I felony. Furthermore, by executing this proposal, the undersigned certifies to the best of Vendor’s knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal or State department or agency. As required by G.S. 143-48.5, the undersigned Vendor certifies that it, and each of its sub-Contractors for any Contract awarded as a result of this RFP, complies with the requirements of Article 2 of Chapter 64 of the NC General Statutes, including the requirement for each employer with more than 25 employees in North Carolina to verify the work authorization of its employees through the federal E-Verify system. G.S. 133-32 and Executive Order 24 (2009) prohibit the offer to, or acceptance by, any State Employee associated with the preparing plans, specifications, estimates for public Contract; or awarding or administering public Contracts; or inspecting or supervising delivery of the public Contract of any gift from anyone with a Contract with the State, or from any person seeking to do business with the State. By execution of this response to the RFP, the undersigned certifies, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

**Failure to execute/sign the proposal prior to submission shall render the proposal invalid and it WILL BE REJECTED. Late proposals cannot be accepted.**

VENDOR:		
STREET ADDRESS:	P.O. BOX:	ZIP:
CITY & STATE & ZIP:	TELEPHONE NUMBER:	TOLL FREE TEL. NO:
PRINCIPAL PLACE OF BUSINESS ADDRESS IF DIFFERENT FROM ABOVE (SEE INSTRUCTIONS TO VENDORS ITEM #10):		
PRINT NAME & TITLE OF PERSON SIGNING ON BEHALF OF VENDOR:		FEDERAL ID NUMBER:
VENDOR’S AUTHORIZED SIGNATURE:	DATE:	EMAIL:

Offer valid for at least 120 days from date of proposal opening, unless otherwise stated here: \_\_\_\_\_ days. After this time, any withdrawal of offer shall be made in writing, effective upon receipt by the agency issuing this RFP.

**ACCEPTANCE OF PROPOSAL**

If any or all parts of this proposal are accepted by Durham Public Schools, an authorized representative of Durham Public Schools shall affix his/her signature hereto and this document and all provisions of this Request For Proposal along with the Vendor proposal response and the written results of any negotiations shall then constitute the written agreement between the parties. A copy of this acceptance will be forwarded to the successful Vendor(s).

**FOR DURHAM PUBLIC SCHOOLS USE ONLY:** Offer accepted and Contract awarded this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, as indicated on the attached certification, by

_____ (Authorized Representative of [Agency Name])
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## 1.0 REQUEST FOR PROPOSAL DOCUMENT

The RFP is comprised of the base RFP document, any attachments, and any addenda released before Contract award. All attachments and addenda released for this RFP in advance of any Contract award are incorporated herein by reference.

### 1.1 Proposal Questions

Written questions concerning this RFP will be received until **2:00 pm on 4/9/2024** Eastern Standard Time. They must be sent via email to: **Dist.Purchasing@dpsnc.net** please insert "Questions for bid **RFP# 179-2324-242-CNS\_MGMT\_SOFTWARE**" as the subject for the email.

Durham Public Schools will prepare responses to all written questions submitted, and post an addendum to the Interactive Purchasing System (IPS) <https://www.ips.state.nc.us/ips/> oral answers are not binding on Durham Public Schools.

Questions received prior to the submission deadline date, Durham Public Schools response, and any additional terms deemed necessary by Durham Public Schools be posted in the form of an addendum to the Interactive Purchasing System (IPS), <http://www.ips.state.nc.us>, and shall become an Addendum to this RFP. No information, instruction or advice provided orally or informally by any Durham Public Schools personnel, whether made in response to a question or otherwise in connection with this RFP, shall be considered authoritative or binding. Vendors shall rely only on written material contained in an Addendum to this RFP.

Vendor contact regarding this RFP with anyone other than DPS employee listed above may be grounds for rejection of said Vendor's offer.

Critical updated information may be included in these Addenda. It is important that all Vendors bidding on this RFP periodically check the State website for any and all Addenda that may be issued prior to the offer opening date.

### 1.2 NOTICE TO VENDORS REGARDING RFP TERMS AND CONDITIONS

It shall be the Vendor's responsibility to read the Instructions, the State's terms and conditions, all relevant exhibits and attachments, and any other components made a part of this RFP, and comply with all requirements and specifications herein. Vendors also are responsible for obtaining and complying with all Addenda and other changes that may be issued in connection with this RFP.

## 2.0 PROPOSAL SUBMITTAL

Sealed proposals, subject to the conditions made a part hereof and the receipt requirements described below, shall be received at the address indicated in the table below, for furnishing and delivering those items or services as described herein.

Mailing address for delivery of proposal via US Postal Service	Office Address of delivery by any other method (special delivery, overnight, or any other carrier)
<p><i>Durham Public Schools</i></p> <p><b>RFP# 179-2324-242-CNS_MGMT_SOFTWARE</b>  <b>Purchasing Department</b>  <b>Attn: Tanita Nicholson</b>  <b>511 Cleveland Street</b>  <b>Durham, NC 27701</b></p>	<p><i>Durham Public Schools</i></p> <p><b>RFP# 179-2324-242-CNS_MGMT_SOFTWARE</b>  <b>Purchasing Department</b>  <b>Attn: Tanita Nicholson</b>  <b>511 Cleveland Street</b>  <b>Durham, NC 27701</b></p>

**IMPORTANT NOTE:** All proposals shall be physically delivered to the office address listed above on or before the proposal deadline in order to be considered timely, regardless of the method of delivery. **This is an absolute requirement.** All risk of late arrival due to unanticipated delay—whether delivered by hand, U.S. Postal Service, courier or other delivery service is entirely on the Vendor. **It is the sole responsibility of the Vendor to have the proposal physically in this Office by the specified time and date of opening.** The time of delivery will be marked on each proposal when received, and any proposal received after the proposal submission deadline will be rejected. Sealed proposals, subject to the conditions made a part hereof, will be received at the address indicated in the table in this Section, for furnishing and delivering the commodity as described herein.

Vendors are cautioned that proposals sent via U.S. Mail, including Express Mail, may **not** be delivered to the agency’s purchasing office on the due date in time to meet the proposal deadline. All Vendors are urged to take the possibility of delay into account when submitting a proposal. **Attempts to submit a proposal via facsimile (FAX) machine, telephone or electronic means, including but not limited to email, in response to this RFP shall NOT be accepted.**

- a) Submit your proposal in a sealed package. Clearly mark each package with: (1) Vendor name; (2) the RFP number; and (3) the due date. Address the package(s) for delivery as shown in the table above. If Vendor is submitting more than one (1) proposal, each proposal shall be submitted in separate sealed envelopes and marked accordingly. For delivery purposes, separate sealed envelopes from a single Vendor may be included in the same outer package. Proposals are subject to rejection unless submitted with the information above included on the outside of the sealed proposal package.

## **2.1 PROPOSAL CONTENTS**

Vendors shall populate all attachments of this RFP that require the Vendor to provide information and include an authorized signature where requested. Vendor RFP responses shall include the following items and those attachments should be arranged in the following order:

- a) Cover Letter
- b) Title Page: Include the company name, address, phone number and authorized representative along with the Proposal Number.
- c) Completed and signed version of EXECUTION PAGES, along with the body of the RFP, and signed receipt pages of any addenda released in conjunction with this RFP (if required to be returned).

## **2.2 DEFINITIONS, ACRONYMS, AND ABBREVIATIONS**

- a) **BAFO:** Best and Final Offer, submitted by a Vendor to alter its initial offer, made in response to a request by the issuing agency.
- b) **BUYER:** The employee of Durham Public Schools or Other Eligible Entity that places an order with the Vendor.
- c) **CONTRACT LEAD:** Representative of Durham Public Schools who corresponds with potential Vendors in order to identify and contract with that Vendor providing the greatest benefit to Durham Public Schools and who will administer this contract
- d) **E-PROCUREMENT SERVICES:** The program, system, and associated services through which the State conducts electronic procurement.
- e) **FOB-DESTINATION:** Title changes hand from Vendor to purchaser at the destination point of the shipment; Vendor owns commodity in transit and files any claims, and Vendor pays all freight and any related transportation charges. A solicitation may request Vendors to separately identify freight charges in their proposal, but no amount or charge not included as part of the total proposal price will be paid.
- f) **LOT:** A grouping of similar products within this RFP.
- g) **ON-TIME DELIVERY:** The delivery of all items within a single order to the receiving point designated by the ordering entity within the delivery time required.
- h) **QUALIFIED PROPOSAL:** A responsive proposal submitted by a responsible Vendor.
- i) **RFP:** Request for Proposal
- j) **STATE:** The State of North Carolina, including any of its sub-units recognized under North Carolina law.
- k) **STATE AGENCY:** Any of the more than 400 sub-units within the executive branch of the State, including its departments, boards, commissions, institutions of higher education and other institution.
- l) **VENDOR:** Supplier, bidder, proposer, company, firm, corporation, partnership, individual or other entity submitting a response to a Request for Proposal.

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## **3.0 METHOD OF AWARD AND PROPOSAL EVALUATION PROCESS PROPOSAL REVIEW AND AWARD**

It is the intent of Durham Public Schools to award this RFP to the responsible bidder(s) who best matches the needs of Durham Public Schools. Durham Public Schools reserves the right to reject any and all bids. All qualified proposals will be evaluated and awards will be made to the Vendor(s) meeting the RFP requirements and achieving the highest and best final evaluation.

While it is the intent of Durham Public Schools to award this RFP to a single Vendor, Durham Public Schools reserves the right to make separate awards to different Vendors for one or more line items, to not award one or more line items or to cancel this RFP in its entirety without awarding a contract, if it is considered to be most advantageous to Durham Public Schools to do so.

The status of a Vendor's E-Procurement Services account(s) shall be considered a relevant factor in determining whether to approve the award of a contract under this RFP. Any Vendor with an

E-Procurement Services account that is in arrears by 91 days or more at the time of proposal opening may, at the State's discretion be disqualified from further evaluation or consideration.

Durham Public Schools reserves the right to waive any minor informality or technicality in proposals received.

### **3.1 CONFIDENTIALITY AND PROHIBITED COMMUNICATIONS DURING EVALUATION**

During the evaluation period—from the date proposals are opened through the date the contract is awarded—each Vendor submitting a proposal (including its representatives, sub-contractors and/or suppliers) is prohibited from having any communications with any person inside or outside the using agency, issuing agency, other government agency office, or body (including the purchaser named above, department secretary, agency head, members of the general assembly and/or governor's office), or private entity, if the communication refers to the content of Vendor's proposal or qualifications, the contents of another Vendor's proposal, another Vendor's qualifications or ability to perform the contract, and/or the transmittal of any other communication of information that could be reasonably considered to have the effect of directly or indirectly influencing the evaluation of proposals and/or the award of the contract. A Vendor not in compliance with this provision shall be disqualified from contract award, unless it is determined in the State's discretion that the communication was harmless, that it was made without intent to influence and that the best interest of the State would not be served by the disqualification. A Vendor's proposal may be disqualified if its subcontractor and supplier engage in any of the foregoing communications during the time that the procurement is active (i.e., the issuance date of the procurement to the date of contract award). Only those discussions, communications or transmittals of information authorized or initiated by the issuing agency for this RFP or general inquiries directed to the purchaser regarding requirements of the RFP (prior to proposal submission) or the status of the contract award (after submission) are excepted from this provision.

### **3.2 PROPOSAL EVALUATION PROCESS**

Durham Public Schools shall review all Vendor responses to this RFP to confirm that they meet the specifications and requirements of the RFP.

#### **Durham Public Schools will conduct a One-Step evaluation of Proposals:**

Proposals will be received from each responsive Vendor in a sealed envelope or package.

All proposals must be received by the issuing agency not later than the date and time specified on the cover sheet of this RFP.

At that date and time, the package containing the proposals from each responding firm will be opened publicly and the name of the Vendor and total cost offered will be announced. Interested parties are cautioned that these costs and their components are subject to further evaluation for completeness and correctness and therefore may not be an exact indicator of a Vendor's pricing position.

At their option, the evaluators may request oral presentations or discussion with any or all Vendors for the purpose of clarification or to amplify the materials presented in any part of the proposal. Vendors are cautioned, however, that the evaluators are not required to request presentations or other clarification—and often do not. Therefore, all proposals should be complete and reflect the most favorable terms available from the Vendor.

Durham Public Schools reserves the right to reject all original offers and request one or more of the Vendors submitting proposals within a competitive range to submit a best and final offer (BAFO), based on discussions and negotiations with Durham Public Schools, if the initial responses to the RFP have been evaluated and determined to be unsatisfactory.

Upon completion of the evaluation process, Durham Public Schools will make Award(s) based on the evaluation and post the award(s) to IPS under the RFP number for this solicitation. Award of a Contract to one Vendor does not mean the other proposals lacked merit, but that, all factors considered, the selected proposal was deemed most advantageous and represented the best value to Durham Public Schools.

### **3.3 INTERPRETATION OF TERMS AND PHRASES**

This Request for Proposal serves two functions: (1) to advise potential Vendors of the parameters of the solution being sought by the Department; and (2) to provide (together with other specified documents) the terms of the Contract resulting from this procurement. As such, all terms in the Request for Proposal shall be enforceable as contract terms in accordance with the General Contract Terms and Conditions. The use of phrases such as “shall,” “must,” and “requirements” are intended to create enforceable contract conditions. In determining whether proposals should be evaluated or rejected, the Department will take into consideration the degree to which Vendors have proposed or failed to propose solutions that will satisfy the Department’s needs as described in the Request for Proposal. Except as specifically stated in the Request for Proposal, no one requirement shall automatically disqualify a Vendor from consideration. However, failure to comply with any single requirement may result in the Department exercising its discretion to reject a proposal in its entirety.

### **4.0 REQUIREMENTS**

This Section lists the requirements related to this RFP. By submitting a proposal, the Vendor agrees to meet all stated requirements in this Section as well as any other specifications, requirements and terms and conditions stated in this RFP. If a Vendor is unclear about a requirement or specification or believes a change to a requirement would allow for Durham Public Schools to receive a better proposal, the Vendor is urged and cautioned to submit these items in the form of a question during the question and answer period in accordance with Section 1.1.

#### **4.1 CONTRACT TERM**

The Contract shall have an initial term of **one year**, beginning on the date of contract award (the “Effective Date”). The Vendor shall begin work under the Contract within **thirty (30)** business days of the Effective Date.

At the end of the Contract’s current term, Durham Public Schools shall have the option, in its sole discretion, to renew the Contract on the same terms and conditions for up to a total of four additional one-year terms. Durham Public Schools will give the Vendor written notice of its intent whether to exercise each option no later than thirty (30) days before the end of the Contract’s then-current term. In addition, Durham Public Schools reserves the right to extend a contract term for a period of up to 180 days in 90-day-or-less increments.

#### **4.2 PRICING**

Proposal price shall constitute the total cost to Buyer for complete performance in accordance with the requirements and specifications herein, including all applicable charges handling, administrative and other

similar fees. Vendor shall not invoice for any amounts not specifically allowed for in this RFP. Complete ATTACHMENT III: PRICING FORM and include in Proposal.

#### 4.3 INVOICES

- a) Invoices must be submitted to the Accounts Payable Office on the Vendor(s) official letterhead/stationery.
- b) Invoices must bear the correct contract number/purchase order number to ensure prompt payment. The Vendor's failure to include the correct purchase order number may cause delay in payment.
- c) Invoices must include an accurate description of the work/items for which the invoice is being submitted, the invoice date, the period of time covered when applicable, the amount of fees due to the Vendor and the original signature of the Vendor's project manager.

#### 4.4 PAYMENT TERMS

- a) The Vendor will be compensated at the rates quoted in the Vendor's Cost Proposal.
- b) The Vendor will be paid net thirty (30) calendar days after the Vendor's invoice is approved by Durham Public Schools.

#### 4.5 FINANCIAL STABILITY

Each Vendor shall certify it is financially stable by completing the ATTACHMENT IV: CERTIFICATION OF FINANCIAL CONDITION. The State is requiring this certification to minimize potential issues from Contracting with a Vendor that is financially unstable. From the date of the Certification to the expiration of the Contract, the Vendor shall notify Durham Public Schools within thirty (30) days of any occurrence or condition that materially alters the truth of any statement made in this Certification.

#### 4.6 VENDOR EXPERIENCE

When applicable in its Proposal, Vendor shall demonstrate experience with public and/or private sector clients with similar or greater size and complexity to the State of North Carolina. Vendor shall provide information as to the qualifications and experience of all executive, managerial, legal, and professional personnel to be assigned to this project, including resumes citing experience with similar projects and the responsibilities to be assigned to each person.

#### 4.7 REFERENCES

Vendors shall provide at least **three (3)** references for which your company has provided services of similar size and scope to that proposed herein. Durham Public Schools may contact these users to determine the services provided are substantially similar in scope to those proposed herein and Vendor's performance has been satisfactory. The information obtained may be considered in the evaluation of the proposal.

COMPANY NAME	CONTACT NAME	TELEPHONE NUMBER



## 4.8 BACKGROUND CHECKS

Vendor and its personnel are required to provide or undergo background checks at Vendor's expense prior to beginning work with the State. As part of Vendor background the details below must be provided to Durham Public Schools:

- a) Any **criminal felony conviction**, or conviction of any crime involving moral turpitude, including, but not limited to fraud, misappropriation or deception, of Vendor, its officers or directors, or any of its employees or other personnel to provide services on this project, of which Vendor has knowledge or a statement that it is aware of none;
- b) Any **criminal investigation** for any offense involving moral turpitude, including, but not limited to fraud, misappropriation, falsification or deception pending against Vendor of which it has knowledge or a statement it is aware of none;
- c) Any **regulatory sanctions** levied against Vendor or any of its officers, directors or its professional employees expected to provide services on this project by any state or federal regulatory agencies within the past three years or a statement that there are none. As used herein, the term "regulatory sanctions" includes the revocation or suspension of any license or certification, the levying of any monetary penalties or fines, and the issuance of any written warnings;
- d) Any **regulatory investigations** pending against Vendor or any of its officers, directors or its professional employees expected to provide services on this project by any state or federal regulatory agencies of which Vendor has knowledge or a statement that there are none.
- e) Any **civil litigation**, arbitration, proceeding, or judgments pending against Vendor during the three (3) years preceding submission of its proposal herein or a statement that there are none.

Vendor's responses to these requests shall be considered to be continuing representations and Vendor's failure to notify Durham Public Schools within thirty (30) days of any criminal litigation, investigation or proceeding involving Vendor or its then current officers, directors or persons providing services under this contract during its term shall constitute a material breach of contract. The provisions of this paragraph shall also apply to any subcontractor utilized by Vendor to perform services under this contract.

Any personnel or agent of the Vendor performing services under any contract arising from this RFP may be required to undergo a background check at the expense of the Vendor, if so requested by Durham Public Schools.

## 4.9 PERSONNEL

Vendor shall not substitute key personnel assigned to the performance of this Contract without prior written approval by the Contract Lead. Vendor shall notify the Contract Lead of any desired substitution, including the name(s) and references of Vendor's recommended substitute personnel. Durham Public Schools will approve or disapprove the requested substitution in a timely manner. Durham Public Schools may, in its sole discretion, terminate the services of any person providing services under this Contract. Upon such termination, Durham Public Schools may request acceptable substitute personnel or terminate the contract services provided by such personnel.

## 4.10 VENDOR'S REPRESENTATIONS

- a) Vendor warrants that qualified personnel shall provide services under this Contract in a professional manner. "Professional manner" means that the personnel performing the services will possess the skill and competence consistent with the prevailing business standards in the industry. Vendor agrees that it will not enter any agreement with a third party that may abridge any rights of Durham Public Schools under this Contract. Vendor will serve as the prime contractor under this Contract and shall be responsible for the performance and payment of all

subcontractor(s) that may be approved by Durham Public Schools. Names of any third party Vendors or subcontractors of Vendor may appear for purposes of convenience in Contract documents; and shall not limit Vendor's obligations hereunder. Vendor will retain executive representation for functional and technical expertise as needed in order to incorporate any work by third party subcontractor(s).

- b) If any services, deliverables, functions, or responsibilities not specifically described in this Contract are required for Vendor's proper performance, provision and delivery of the service and deliverables under this Contract, or are an inherent part of or necessary sub-task included within such service, they will be deemed to be implied by and included within the scope of the contract to the same extent and in the same manner as if specifically described in the contract. Unless otherwise expressly provided herein, Vendor will furnish all of its own necessary management, supervision, labor, facilities, furniture, computer and telecommunications equipment, software, supplies and materials necessary for the Vendor to provide and deliver the Services and Deliverables.
- c) Vendor warrants that it has the financial capacity to perform and to continue to perform its obligations under the contract; that Vendor has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Vendor that could materially adversely affect performance of this Contract; and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction.

## **5.0 SCOPE OF WORK/ACCEPTANCE OF WORK**

In the event acceptance criteria for any work or deliverables is not described in contract documents or work orders hereunder, Durham Public Schools shall have the obligation to notify Vendor, in writing ten (10) calendar days following completion of such work or deliverable described in the Contract that it is not acceptable. The notice shall specify in reasonable detail the reason(s) it is unacceptable. Acceptance by Durham Public Schools shall not be unreasonably withheld; but may be conditioned or delayed as required for reasonable review, evaluation, installation or testing, as applicable of the work or deliverable. Final acceptance is expressly conditioned upon completion of all applicable assessment procedures. Should the work or deliverables fail to meet any requirements, acceptance criteria or otherwise fail to conform to the contract, Durham Public Schools may exercise any and all rights hereunder, including, for deliverables, such rights provided by the Uniform Commercial Code as adopted in North Carolina.

## **5.1 LIQUIDATED DAMAGES**

The parties agree that calculation of actual damages resulting from failure to meet the following performance standards is extremely difficult, if not impossible, to calculate accurately, and the parties also agree that the compensation identified for such failures are a reasonable estimate of damages resulting from a failure to meet the performance standard described. Therefore, the parties agree that the Vendor shall be subject to amounts due as liquidated damages but not as a penalty, for each such failure, as follows:

Notwithstanding any other provision herein, liquidated damages shall not be subject to a limitation on damages or limit of liability for damages that otherwise may be applicable to recoverable damages.

## **5.2 DISPUTE RESOLUTION**

The parties agree that it is in their mutual interest to resolve disputes informally. A claim by the Vendor shall be submitted in writing to Durham Public Schools' Contract Lead for resolution. A claim by Durham Public Schools shall be submitted in writing to the Vendor's Project Manager for resolution. The Parties shall negotiate in good faith and use all reasonable efforts to resolve such dispute(s). During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under this Contract. If a dispute cannot be resolved between the Parties within

thirty (30) days after delivery of notice, either Party may elect to exercise any other remedies available under this Contract, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.

### **5.3 CONTRACT CHANGES**

Contract changes, if any, over the life of the contract shall be implemented by contract amendments agreed to in writing by Durham Public Schools and Vendor.

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**RFP begins on the next page**

**6.0 PROPOSAL**

**Durham Public Schools School Nutrition Services  
Request for Proposals - Front and Back of House Management Software**

<b>GENERAL FEATURES</b>	<b>Response (Yes "Y" or No "N")</b>
Option to purchase only the specific modules needed for each site	
Integrates with Sylogist Software	
Ability to have hierarchy user accounts (Administrator, Central Office, Manager, Cashier)	
Free Customer Service	
1 Year or more no cost training for all staff; includes start up (on-site and/or virtual)	
Has training or demo mode for staff to practice in	
All software is Single Sign-On (SSO) compatible with Office 365	

<b>POS HARDWARE</b>	<b>Response (Yes "Y" or No "N")</b>
Universal keypad acceptance of combo keypad/barcode scanner for entry of PIN, ID, or Barcode	
Support meal and a la carte sales	
Ability to use current site computers, laptops, tablets	
Supports dual sided PIN devices per POS	

<b>CENTRAL PURCHASING</b>	<b>Response (Yes "Y" or No "N")</b>
Ability to preselect specific site orders for automatic approval	
Automatically transform requisitions to purchase orders and supply orders based on supply chain hierarchy	
Summarize orders for multiple sites for drop ship by vendor	
Block items from appearing at specific sites	
Block sites from ordering specific items	

<b>POINT OF SALE</b>	<b>Response (Yes "Y" or No "N")</b>
Ability to take meal payments at the manager or cashier serving line	
Day end reports	
Reports to be included as part of the end of day can be determined by the user	
Allergen Reports	
Automatically detects second reimbursable meal and charges a la carte or second meal price	
Automatically detects ID entry from students from other schools and processes their eligibility according to their eligibility at the home school	
Log reimbursable sales to students not in the database	
Ability to track sales by item, including reimbursable meal components by item	

Is compatible with Community Eligibility Provision (CEP) accounting	
Allow cash, check, or student's account for each transaction	
Display and prints a detailed report of student's daily, weekly, monthly, and yearly activity	
Determine overage and shortage for each cashier	
Ability to track/print an individual cashier (user) overages and shortages for a period of time	
Support multiple POS terminals per school	
Support no ID cash sales	
Support dual serving lines per cashier register	
Support prepayment at POS	
Cashier can enter cash or check info without leaving sales screen	
Apply change to account without leaving the sales transaction	
Provide multiple methods for patron identification	
Charging only allowed for certain accounts	
Provide barcoded ID cards	
Allow cashier to enter ID	
Student information and sales screen includes picture, notes, Allergens, name, ID, and account balance and prevents student eligibility status identification.	
Ability for sales screen to notify cashier of account alerts (allergy, low balance, customizable notes and student/adult is from another site)	
Support sales by class roster on screen	
Allow correction voiding and correction of sales transaction based on user defined criteria	
Provide for ability to limit or authorize voids and sales correction based on predefined hierarchy.	
Support grade, student, adult, and employee sensitive pricing	
<i>Emergency Roster</i>	
Allow sites to print emergency roster by class or grade for manual sales entry, if needed	
Support electronic or manual cash drawers	
Support tiered meal pricing	
Automatically synchronize student eligibility and demographics	
<i>POS redundancy</i>	
Cashier may still process transactions even if connection with the network is lost	
Ability to scan student medical statements or documents to their record.	

<b>INVENTORY</b>	<b>Response (Yes "Y" or No "N")</b>
Easily set an order hierarchy for each inventory item	
Identify food and non-food items and their storage locations	

Identify purchased and commodity items	
Support multiple vendors and supply units per items, including commodity	
Multiple vendors and prices per item, multiple supply units and packs per item, easily set and change priority for primary supplier, easily set and change priority for commodity items, set minimum ship quantity or dollar limit per vendor with warning alert to user during creation of orders	
Deplete spoilage and loss with reasons	
Inventory adjustment which inventory is decreased or depleted requires a reason	
Support multiple cost basis	
Automated order feature at the site level	
Ability to create an order based on par, predefined shopping lists, menu forecast, stock level, District approved, and warehouse items	
Receiving screen match the original order or can be sorted by item, item code, or vendor code	
List orders by origin and delivery dates	
Ability to receive items manually or update receiving	
Allow items to be added while in the receiving screen or as separate item for shorted items received a different day	
Track variances between ordered and received counts and prices	
Allow sites the option to receive all items or to enter changes for items not received	
Physical inventory counts and value reporting	
Allow for entry of additional cost such as delivery fee, processing fee, broker's fee, and pass through value (NOI-net off invoice)	
Allow users to sort the receiving ticket in various ways in order to easily read and enter data from supplier invoice or packing slip	
Allow partial receiving with option to back order	
User would be able to enter zero received for shorted/out of stock items and discrepancies with the option to back order the item	
Discrepancy report for variances between ordered and received items based on invoice	
Provides the ability to display/print report based on invoice number/vendor which provides a listing of variances in price and quantity between ordered and received	
Entry of counts in both usage units and purchase units	
Site user has the ability to setup and control physical inventory storage locations	
Physical inventory count sheets printable to match storage locations established by site user	
Count data entry screen match printed physical inventory count sheets	

Display/Print variance report showing discrepancies in perpetual versus actual inventory balances	
Inactive inventory items cannot be inventoried	
Save Only and Save & Update feature for physical inventory	
Purchase Order	

<b>MENU PLANNING AND NUTRIENT ANALYSIS</b>	<b>Response (Yes “Y” or No “N”)</b>
USDA approved Nutrient Standard Menu Planning	
Food based component menu planning	
Inventory/Commodity/Ingredient Management	
Recipe Management/Finished Product Management	
HACCP, Allergens, and Target Temperature support	
Create, edit, and delete menu templates for each meal and age group	
View average nutrition of menu for 3-7 days with the ability to drill down to day, menu, pattern, recipe, and item	
Display costing per serving, cost per person, and food cost percentage	
Calendar menu can be printed and exported to other programs to allow for enhancement with graphic and additional notes	
Allow export of menu into web-display to allow for enhancement such as allergen codes & nutrition information	
Scale menu forecasts based on entering overall meal count forecast	
<i>Editable Menu Item Cost</i>	
Support editing of individual menu item counts for offer versus serve	
Distinguish between reimbursable meal forecast, adult, and a la carte forecast for nutrition analysis	
Analyze actual nutrition data after production record is complete	
Allow user to view actual nutrient analysis based on amounts entered from production records	
Support unlimited nutrition categories	
District can determine and set up categories based on needs-such as entrée, vegetable, fruit, etc.	
Transform recipe into finished goods without linking inventory items	
Every recipe is automatically an item	
Each inventory offers the option to multiple unit definitions, food component, and links to nutrition data	
Recipes support multiple serving units	
Each recipe allows for multiple serving unit descriptions, food component definitions, and links	

to an ingredient and/or finished goods nutrition data	
Recipes are a finished product	
Every recipe is automatically a finished product upon production and can be ordered, received, counted, and wasted/spoiled	
Downloaded ingredients/recipes cannot be edited by the user/site	
Site users cannot change recipes and/or ingredients other than the portions needed for production	
Manual entry of nutrition data	
Allow district users to add nutrition received from manufacturer specifications and labels	
Ability to print (detailed) menu formatted reports showing each menu items nutrient contents, i.e carbohydrates, fat, calories, etc. not just total nutrients for the day (summary)	
Ability to scan and attach documents such as nutrition facts and photos to recipes.	

<b>FOOD PRODUCTION</b>	<b>Response (Yes "Y" or No "N")</b>
Production record approved by NC DPI	
Print production records based on local and state guidelines	
Display production record screen for data entry based on menu plan	
Hide or display ingredients of recipe	
Users may choose to display or hide ingredients on production records so that only the menu item displays	
Record target temperature, time of withdrawal of item from heating or cooling source, temperature at withdrawal, and holding temperature of serving line and leftover/discard temperature	
Automatically create finished goods for produced items	
Create pick list for ingredients based on recipes and automatically deplete stock based on recipes	
Allow users to set up various batch requirements based on portion sizes	
Automatically return finished goods to stock or spoil finished goods after posting usage	
<i>Left-over management</i>	
Allow site managers to add leftovers to the menu	
Allow adjustment of preparation requirements based on leftovers available	
Record leftovers by disposition	
Allow site managers to choose between waste, freeze (with use by date), refrigerate (with use by date) and use next day (with use by date)	



<b>STUDENT ELIGIBILITY</b>	<b>Response (Yes “Y” or No “N”)</b>
Complies with current USDA and state application regulations	
Direct certification via file import	
Complete verification module	
Integration with online web applications	
Automated year end rollover process	
Application program sharing (agree to share info)	
Notifies the user up to ten (10) days in advance when a “pending” application expires	
Software generates notification letters (increase or decrease in benefits)	
Allows for 30 operating day grace from previous school year eligibility status and ability to add students to a “temporary” class during the grace period	
Allows more than 1 expiration date for applications due to multiple calendars.	
Second reviewer option on applications	

<b>ONLINE WEB PAYMENT PROCESSING</b>	<b>Response (Yes “Y” or No “N”)</b>
Parent account management (ability for parents to set up email alerts on student’s balances, set up automatic scheduled payments, able to view purchase history, divide payments between students in family and at different building sites)	
Ability to send balance alert email or text, both low and negative balance	
Online payment via web or phone	
Ability for parents to use credit card, debit card, or e-check	
Provides detailed monthly banking and financial reports	
Ability to setup recurring payments	
Low convenience fee for parents	
Free customer support	

<b>ACCOUNTABILITY</b>	<b>Response (Yes “Y” or No “N”)</b>
Complies with current USDA and state meal regulations	
Government reporting for claims	
Support North Carolina reporting	
Custom Report Generator	
User definable letters	
User defined day-end reports	
Interface for accounting	
Generate USDA Edit check report based on daily attendance	
Generate USDA approved reimbursement report	
Support Community Eligibility	
Allow the user to set up custom reports as needed without vendor tech support	
Export data in a variety of formats: Excel, Word, PDF, Text, and CSV formats/spreadsheets	

Meal eligibilities categories are defined by the District office (free/reduced/paid/adult/employee, etc)	
Variable report generating criteria	
The ability to generate reports based on all schools, groups of schools, or individual school	
The ability to generate reports from production records related to item utilization/uptake, waste, etc.	
Report screen includes a preview option	
Allow the user to select correct reports before printing	
Reports can be set to automatically generate	
Reports are displayed on screen with the option to save, print, or export the report	
End of day reports can be set up to generate after site completed end of day routine	
Centralizing importing and exporting of student pictures	
Bank deposit reconciliation	

<b>FINANCIAL (if applicable)</b>	<b>Response (Yes "Y" or No "N")</b>
Mirror Sylogist Software	
Financial reports that include trial balance, income statement, balance sheet, place cost, indirect cost	
State FC1-A report view and print	
State FC1-A report set up	
Import to Sylogist from District	
Export to Sylogist from School Nutrition	
Statistical Report that include labor hours, supplemental sales, meal counts, plate cost	

<b>TECHNOLOGY</b>	<b>Response (Yes "Y" or No "N")</b>
Web-based	
Built in exports for Excel, CSV, Word, Text, and PDF	
Automated synchronization features for communication updates in near real-time between web payments, portal, central student database, and distributed databases by supporting redundancy for off-line operation at the cashier station and manager station, as well as student mobility between schools	
Fully integrated Back Office-Inventory, Order Entry/Purchasing, Menu Planning/Production, Nutrient Analysis, Student Eligibility, Accountability, Financial	

**Notes:**

## Durham Public Schools SY24-25

- 56 schools total (Hospital School does not receive meal service)
- 50 production kitchens/on-site service
- 9 transported meals service locations
- 95 (terminals) Point of Service
- 50 Inventories (schools + central warehouse + catering kitchen)
- 17 types of Production Records (147 production records completed across the district each day)

**USDA NON-DISCRIMINATION STATEMENT**

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex (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.

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

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

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

This institution is an equal opportunity provider.

## SCHOOL DISTRICT SPECIAL CONDITIONS OF THE RFP/CONTRACT

Special Conditions are circumstances that are required of all bidders for the RFP.

The dates of delivery and the number of deliveries per school will be mutually agreed upon by the vendor and the Executive Director, School Nutrition Services (SNS) or Designee prior to the first delivery of the school year.

No deliveries will be allowed or accepted at Elementary schools prior to 6:00 am.

No deliveries will be allowed or accepted at Middle and High schools prior to 7:00 am.

All deliveries must be completed by 2:00 pm.

Vendor shall be solely responsible for removing all pallets and delivery materials promptly, the school district will not be held responsible for pallets or equipment.

All invoices must be signed by an authorized SNS employee. The school district will not pay for any invoice that is not signed or is signed by anyone other than an SNS employee.

SNS staff members are not authorized to be in the schools to accept deliveries on non-operational days. Managers are not allowed to make arrangements to meet the delivery driver during a weekend, student vacation day, intersession, or school break. SNS Director will not authorize payment for any product or invoice on a non-operational date.

SNS may require emergency deliveries based upon equipment failure, missing product, or changes in participation expectations. The vendor and SNS Director will make an agreement concerning emergency deliveries.

SNS does not accept any food items or ingredients that contain artificial colors/dyes, artificial flavors, EDTH, or TBHQ. SNS does not accept any food items or ingredients that contain trans fats, including hydrogenated fats listed as an ingredient but noted as "0 grams trans fats" on the nutrition label. SNS does not accept any food items or ingredients with high fructose corn syrup. SNS does not accept any food items or ingredients made with rGBH.

All Special Conditions can be negotiated with the Director in advance as issues arise.

### **District Profile**

SN Director: James Keaten

Phone: 919-384-5920

Email: james\_keaten@dpsnc.net

Address: 1817 Hamlin Road, Durham NC 27704

Warehouse Manager: Paul Johnson

Phone: 984-278-2786

Email: paul\_johnson@dpsnc.net

Address: 808 Bacon Street, Durham NC 27703

SNS Finance Technician: Sonya Daniels

Phone: 919-560-2000 Ext. 26232

Email: sonya\_daniels@dpsnc.net

Address: 1817 Hamlin Road, Durham NC 27704

Emergency Contact: Linden Thayer

Phone: 919-384-5917

Email: linden\_thayer@dpsnc.net

Address: 1817 Hamlin Road, Durham NC 27704

## Average Usage

Level	School	Address	SY23-24 Average Daily Membership	Average Daily Lunch Participation	Average Daily Breakfast Participation	Average Daily Snack Participation	Average Daily Summer Participation
0 - PreK	289 Whitted Pre-K	1210 Sawyer St. 27707 (delivery to LMMS)	118	65	66	0	<i>variable</i>
1 - Elementary	304 Bethesda	2009 S. Miami Blvd. 27703	571	364	242	23	<i>variable</i>
1 - Elementary	308 Burton	1500 Mathison St. 27701	288	186	168	23	<i>variable</i>
1 - Elementary	310 Eastway	610 Alston Ave. 27701	381	304	231	51	<i>variable</i>
1 - Elementary	313 Easley	302 Lebanon Circle 27712	476	185	119	26	<i>variable</i>
1 - Elementary	315 Eno Valley	117 Milton Rd. 27712	531	377	386	56	<i>variable</i>
1 - Elementary	318 Club Blvd	400 W. Club Blvd 27704	381	166	128	84	<i>variable</i>
1 - Elementary	319 Creekside	5321 Ephesus Church Rd. 27707	545	251	242	65	<i>variable</i>
1 - Elementary	320 Glenn	2415 E. Geer St. 27704	577	464	458	13	<i>variable</i>
1 - Elementary	324 Hillandale	2730 Hillandale Rd. 27705	513	329	235	41	<i>variable</i>
1 - Elementary	327 Hope Valley	3005 Dixon Rd. 27707	634	326	223	52	<i>variable</i>
1 - Elementary	328 Holt	4019 Holt School Rd. 27704	620	411	221	27	<i>variable</i>
1 - Elementary	332 Forest View	3007 Mt. Sinai Rd. 27705	657	342	182	80	<i>variable</i>
1 - Elementary	339 Lakewood	2520 Vesson Ave. 27707	387	285	166	39	<i>variable</i>
1 - Elementary	340 Little River	2315 Snow Hill Rd. 27712	294	111	121	35	<i>variable</i>
1 - Elementary	344 Fayetteville St.	2905 Fayetteville St. 27707	224	174	156	41	<i>variable</i>

1 - Elementary	347 George Watts	700 Watts St. 27701	267	99	88	79	<i>variable</i>
1 - Elementary	348 Mangum	9008 Quail Roost, Bahama 27503	282	94	111	22	<i>variable</i>
1 - Elementary	349 Lyon's Farm	906 Scott King Rd 27713	496	207	210	101	<i>variable</i>
1 - Elementary	351 Murray-Massenburg	3900 S. Roxboro Road 27713	375	190	150	30	<i>variable</i>
1 - Elementary	352 Merrick - Moore	2325 Cheek Rd. 27704	548	397	323	78	<i>variable</i>
1 - Elementary	354 Morehead	909 Cobb St. 27707	195	84	92	78	<i>variable</i>
1 - Elementary	360 Oak Grove	3810 Wake Forest Rd. 27703	422	294	179	22	<i>variable</i>
1 - Elementary	362 Parkwood	5207 Revere Rd. 27713	570	407	294	71	<i>variable</i>
1 - Elementary	363 E.K. Powe	913 9th St. 27705	412	164	115	82	<i>variable</i>
1 - Elementary	364 Pearson	4915 Barbee Rd. 27713	711	274	211	139	<i>variable</i>
1 - Elementary	367 R.N. Harris	1520 Cooper St. 27703	293	211	160	28	<i>variable</i>
1 - Elementary	369 Sandy Ridge	1417 Old Oxford Rd 27704	457	286	199	51	<i>variable</i>
1 - Elementary	372 Southwest	2320 Cook Rd. 27713	655	322	264	109	<i>variable</i>
1 - Elementary	374 Spaulding	1531 S. Roxboro Rd. 27707	211	162	106	24	<i>variable</i>
1 - Elementary	376 Spring Valley	2051 Northern Durham Pkwy 27703	533	283	271	78	<i>variable</i>
1 - Elementary	388 W.G. Pearson	3501 Fayetteville St. 27707	329	238	219	21	<i>variable</i>
1 - Elementary	400 Y.E. Smith	2410 E. Main St. 27703	256	237	144	90	<i>variable</i>
2 - Middle	306 Brogden	1001 Leon St. 27704	702	406	238	6	<i>variable</i>

2 - Middle	314 School for Creative Studies	5001 Red Mill Rd. 27704	429	166	185	0	<i>variable</i>
2 - Middle	316 Carrington	227 Milton Rd. 27712	739	510	200	4	<i>variable</i>
2 - Middle	323 Durham School of the Arts	400 North Duke St. 27701	1763	392	225	0	<i>variable</i>
2 - Middle	338 Shepard	2401 Dakota St. 27707	397	267	155	11	<i>variable</i>
2 - Middle	342 Lakewood Montessori	2119 Chapel Hill Rd., 27707	303	76	67	0	<i>variable</i>
2 - Middle	343 Lucas Middle	923 Snow Hill Road, 27704	414	242	151	7	<i>variable</i>
2 - Middle	346 Lowe's Grove	4418 S. Alston Ave. 27713	633	391	201	8	<i>variable</i>
2 - Middle	355 Neal	201 Baptist Rd. 27704	766	425	200	11	<i>variable</i>
2 - Middle	366 Githens	4800 Chapel Hill Rd. 27707	818	393	207	19	<i>variable</i>
2 - Middle	370 Rogers - Herr	911 Cornwallis Rd. 27707	627	276	128	21	<i>variable</i>
3 - High	309 Early College - J.D. Clement	1801 Fayetteville St. 27707 (delivery to Hillside)	372	56	27	0	<i>variable</i>
3 - High	312 Jordan	6806 Garrett Rd. 27707	2084	237	92	0	<i>variable</i>
3 - High	317 City of Medicine Academy	301 Crutchfield St 27704	333	82	51	0	<i>variable</i>
3 - High	322 Performance Learning Center	401 N. Driver St, 27703 (delivery to LMMS)	117	22	27	0	<i>variable</i>
3 - High	325 Hillside	3727 Fayetteville St. 27707	1469	319	181	0	<i>variable</i>
3 - High	341 Lakeview	3507 Dearborn Drive, 27704 (delivery to SCS)	94	50	19	0	<i>variable</i>
3 - High	356 Northern	4622 N Roxboro Street, Durham NC 27704	1316	218	173	0	<i>variable</i>
3 - High	365 Riverside	3218 Rose of Sharon Rd. 27712	1848	312	234	0	<i>variable</i>
3 - High	368 Southern SES	800 Clayton Rd. 27703	1341	413	149	0	<i>variable</i>
3 - High	701 Hillside New Tech	3727 Fayetteville St. 27707 (delivery to Hillside)	238	47	25	0	<i>variable</i>

Catering	Old Northern HS Kitchen	117 Tom Wilkinson Rd 27712	TBD	TBD	TBD	TBD	TBD
<b>TOTAL</b>			<b>31012</b>	<b>13589</b>	<b>9415</b>	<b>1846</b>	<i>variable</i>



## 6.1 PROPOSAL SCHEDULE

EVENT	RESPONSIBILITY	DATE & TIME
Issue RFP	DPS	Tuesday, APRIL 2, 2024
Submit Written Questions	Vendor	April 9, 2024 by 2pm
Provide Response to Questions	DPS	April 11, 2024 by 5pm
Submit Proposals Vendor	Vendor	May 2, 2024 by 1pm
Bid Opening	DPS	May 2, 2024 by 3pm

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**Attachments to this RFP begin on the next page**

## ATTACHMENT I: INSTRUCTIONS TO VENDORS:

1. **READ, REVIEW AND COMPLY:** It shall be the Vendor's responsibility to read this entire document, review all enclosures and attachments, and any addenda thereto, and comply with all requirements specified herein, regardless of whether appearing in these Instructions to Vendors or elsewhere in this RFP document.
2. **LATE PROPOSALS:** Late proposals, regardless of cause, will not be opened or considered, and will automatically be disqualified from further consideration. It shall be the Vendor's sole responsibility to ensure delivery at the designated office by the designated time.
3. **ACCEPTANCE AND REJECTION:** Durham Public Schools reserves the right to reject any and all proposals, to waive any informality in proposals and, unless otherwise specified by the Vendor, to accept any item in the proposal. If either a unit price or an extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded.
4. **BASIS FOR REJECTION:** Pursuant to 01 NCAC 05B .0501, Durham Public Schools reserves the right to reject any and all offers, in whole or in part, by deeming the offer unsatisfactory as to quality or quantity, delivery, price or service offered, non-compliance with the requirements or intent of this solicitation, lack of competitiveness, error(s) in specifications or indications that revision would be advantageous to Durham Public Schools, cancellation or other changes in the intended project or any other determination that the proposed requirement is no longer needed, limitation or lack of available funds, circumstances that prevent determination of the best offer, or any other determination that rejection would be in the best interest of Durham Public Schools.
5. **EXECUTION:** Failure to sign EXECUTION PAGE in the indicated space will render proposal non-responsive, and it shall be rejected.
6. **ORDER OF PRECEDENCE:** In cases of conflict between specific provisions in this solicitation or those in any resulting contract, the order of precedence shall be (high to low) (1) any special terms and conditions specific to this RFP, including any negotiated terms; (2) requirements and specifications in Sections 4 and 5 of this RFP; (3) North Carolina General Contract Terms and Conditions in ATTACHMENT II: NORTH CAROLINA GENERAL CONTRACT TERMS AND CONDITIONS; (4) Instructions in ATTACHMENT I: INSTRUCTIONS TO VENDORS; and (5) Vendor's Proposal.
7. **INFORMATION AND DESCRIPTIVE LITERATURE:** Vendor shall furnish all information requested and in the spaces provided in this document. Further, if required elsewhere in this proposal, each Vendor must submit with their proposal sketches, descriptive literature and/or complete specifications covering the products offered. Reference to literature submitted with a previous proposal or available elsewhere will not satisfy this provision. Proposals that do not comply with these requirements shall be subject to rejection without further consideration.
8. **SUSTAINABILITY:** To support the sustainability efforts of Durham Public Schools of North Carolina we solicit your cooperation in this effort. Pursuant to Executive Order 156 (1999), it is desirable that all responses meet the following:
  - All copies of the proposal are printed double sided.
  - All submittals and copies are printed on recycled paper with a minimum post-consumer content of 30%.

- Unless absolutely necessary, all proposals and copies should minimize or eliminate use of non-recyclable or non-reusable materials such as plastic report covers, plastic dividers, vinyl sleeves, and GBC binding. Three-ringed binders, glued materials, paper clips, and staples are acceptable.
- Materials should be submitted in a format which allows for easy removal, filing and/or recycling of paper and binder materials. Use of oversized paper is strongly discouraged unless necessary for clarity or legibility.

9. **HISTORICALLY UNDERUTILIZED BUSINESSES:** Pursuant to General Statute 143-48 and Executive Order #150 (1999), Durham Public Schools invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled.

10. **RECIPROCAL PREFERENCE:** G.S. 143-59 establishes a reciprocal preference requirement to discourage other states from favoring their own resident Vendors by applying a percentage increase to the price of any proposal from a North Carolina resident Vendor. The “Principal Place of Business” is defined as that principal place from which the trade or business of the Vendor is directed or managed.

11. **CONFIDENTIAL INFORMATION:** To the extent permitted by applicable statutes and rules, the State will maintain confidential trade secrets that the Vendor does not wish disclosed. As a condition to confidential treatment, each page containing trade secret information shall be identified in boldface at the top and bottom as “CONFIDENTIAL” by the Vendor, with specific trade secret information enclosed in boxes or similar indication. Cost information shall not be deemed confidential under any circumstances. Regardless of what a Vendor may label as a trade secret, the determination whether it is or is not entitled to protection will be determined in accordance with G.S. 132-1.2. Any material labeled as confidential constitutes a representation by the Vendor that it has made a reasonable effort in good faith to determine that such material is, in fact, a trade secret under G.S. 132-1.2. Vendors are urged and cautioned to limit the marking of information as a trade secret or as confidential so far as is possible.

12. **PROTEST PROCEDURES:** When a Vendor wishes to protest a Contract resulting from this solicitation that is awarded by the Division of Purchase and Contract, or awarded by an agency in an awarded amount of at least \$25,000, a Vendor shall submit a written request addressed to the Durham Public Schools, Office of Public Affairs, P. O. Box 30002, Durham, NC 27702. A protest request related to an award amount of less than \$25,000 shall be sent to the purchasing officer of the agency that issued the award. The protest request must be received in the proper office within thirty (30) consecutive calendar days from the date of the Contract award. Protest letters **shall** contain specific grounds and reasons for the protest, how the protesting party was harmed by the award made and any documentation providing support for the protesting party's claims. **Note:** Contract award notices are sent only to the Vendor actually awarded the Contract, and not to every person or firm responding to a solicitation. Proposal status and Award notices are posted on the Internet at <https://www.ips.state.nc.us/ips/>. All protests will be handled pursuant to the North Carolina Administrative Code, 01 NCAC 05B .1519.

13. **MISCELLANEOUS:** Masculine pronouns shall be read to include feminine pronouns and the singular of any word or phrase shall be read to include the plural and vice versa.

14. **COMMUNICATIONS BY VENDORS:** In submitting its proposal, the Vendor agrees not to discuss or otherwise reveal the contents of its proposal to any source, government or private, outside of the using or issuing agency until after the award of the Contract or cancellation of this RFP. All Vendors are forbidden from having any communications with the using or issuing agency, or any other representative of Durham Public Schools concerning the solicitation, during the evaluation of the proposals (i.e., after the public opening of the proposals and before the award of the Contract), unless Durham Public Schools directly contacts the Vendor(s) for purposes of seeking clarification or another reason permitted by the solicitation. A Vendor shall not: (a) transmit to the issuing and/or using agency any information commenting on the ability or qualifications of any other Vendor to provide the advertised good, equipment, commodity; (b) identify defects, errors and/or omissions in any other Vendor's proposal and/or prices at any time during the procurement process; and/or (c) engage in or attempt any other communication or conduct that could influence the evaluation and/or award of the Contract that is the subject of this RFP. Vendors not in compliance with this provision may be disqualified, at the option of Durham Public Schools, from the Contract award. Only those communications with the using agency or issuing agency authorized by this RFP are permitted.
15. **TABLATIONS:** Proposal tabulations can be electronically retrieved at the Interactive Purchasing System (IPS), <https://www.ips.state.nc.us/ips/BidNumberSearch.aspx>. Click on the IPS BIDS icon, click on Search for Bid, enter the proposal number, and then search. Tabulations will normally be available at this website not later than one working day after the proposal opening. Lengthy or complex tabulations may be summarized, with other details not made available on IPS, and requests for additional details or information concerning such tabulations cannot be honored.
16. **VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM:** Vendor Link NC allows Vendors to electronically register free with the State to receive electronic notification of current procurement opportunities for goods and services of potential interests to them available on the Interactive Purchasing System, as well as notifications of status changes to those solicitations. Online registration and other purchasing information are available at the following website <http://ncadmin.nc.gov/about-doa/divisions/purchase-contract>.
17. **WITHDRAWAL OF PROPOSAL:** a Proposal may be withdrawn only in writing and actually received by the office issuing the RFP prior to the time for the opening of Proposals identified on the cover page of this RFP (or such later date included in an Addendum to the RFP). A withdrawal request must be on Vendor's letterhead and signed by an official of the Vendor authorized to make such request. Any withdrawal request made after the opening of Proposals shall be allowed only for good cause shown and in the sole discretion of the Division of Purchase and Contract.
18. **INFORMAL COMMENTS:** Durham Public Schools shall not be bound by informal explanations, instructions or information given at any time by anyone on behalf of Durham Public Schools during the competitive process or after award. Durham Public Schools is bound only by information provided in this RFP and in formal Addenda issued through IPS.
19. **COST FOR PROPOSAL PREPARATION:** Any costs incurred by Vendor in preparing or submitting offers are the Vendor's sole responsibility; Durham Public Schools of North Carolina will not reimburse any Vendor for any costs incurred prior to award.

20. **VENDOR'S REPRESENTATIVE:** Each Vendor shall submit with its proposal the name, address, and telephone number of the person(s) with authority to bind the firm and answer questions or provide clarification concerning the firm's proposal.
21. **SUBCONTRACTING:** Unless expressly prohibited, a Vendor may propose to subcontract portions of the work to identified subcontractor(s), provided that its proposal clearly describes what work it plans to subcontract and that Vendor includes in its proposal all information regarding employees, business experience, and other information for each proposed subcontractor that is required to be provided for Vendor itself.
22. **INSPECTION AT VENDOR'S SITE:** Durham Public Schools reserves the right to inspect, at a reasonable time, the equipment/item, plant or other facilities of a prospective Vendor prior to Contract award, and during the Contract term as necessary for Durham Public Schools determination that such equipment/item, plant or other facilities conform with the specifications/requirements and are adequate and suitable for the proper and effective performance of the Contract.

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## ATTACHMENT II: NORTH CAROLINA GENERAL CONTRACT TERMS & CONDITIONS

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- 1. PERFORMANCE AND DEFAULT:** If, through any cause, Vendor shall fail to fulfill in timely and proper manner the obligations under this contract, Durham Public Schools shall have the right to terminate this contract by giving written notice to the Vendor and specifying the effective date thereof. In that event, all finished or unfinished deliverable items under this contract prepared by the Vendor shall, at the option of Durham Public Schools, become its property, and the Vendor shall be entitled to receive just and equitable compensation for any acceptable work completed on such materials. Notwithstanding, Vendor shall not be relieved of liability to Durham Public Schools for damages sustained by Durham Public Schools by virtue of any breach of this contract, and Durham Public Schools may withhold any payment due the Vendor for the purpose of setoff until such time as the exact amount of damages due Durham Public Schools from such breach can be determined. Durham Public Schools reserves the right to require at any time a performance bond or other acceptable alternative performance guarantees from a Vendor without expense to Durham Public Schools.

In case of default by the Vendor, Durham Public Schools may procure the goods and services necessary to complete performance hereunder from other sources and hold the Vendor responsible for any excess cost occasioned thereby. In addition, in the event of default by the Vendor under this contract, or upon the Vendor filing a petition for bankruptcy or the entering of a judgment of bankruptcy by or against the Vendor, Durham Public Schools may immediately cease doing business with the Vendor, immediately terminate this contract for cause, and may act to debar the Vendor from doing future business with Durham Public Schools.

- 2. GOVERNMENTAL RESTRICTIONS:** In the event any Governmental restrictions are imposed which necessitate alteration of the material, quality, workmanship or performance of the goods or services offered prior to their delivery, it shall be the responsibility of the Vendor to notify, in writing, the Contract Lead at once, indicating the specific regulation which required such alterations. Durham Public Schools reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract.
- 3. AVAILABILITY OF FUNDS:** Any and all payments to the Vendor shall be dependent upon and subject to the availability of funds to the agency for the purpose set forth in this contract.
- 4. TAXES:** Any applicable taxes shall be invoiced as a separate item.
  - G.S. 143-59.1 bars the Secretary of Administration from entering into Contracts with Vendors if the Vendor or its affiliates meet one of the conditions of G.S. 105-164.8(b) and refuses to collect use tax on sales of tangible personal property to purchasers in North Carolina. Conditions under G.S. 105-164.8(b) include: (1) Maintenance of a retail establishment or office, (2) Presence of representatives in the State that solicit sales or transact business on behalf of the Vendor and (3) Systematic exploitation of the market by media-assisted, media-facilitated, or media-solicited means. By execution of the proposal document the Vendor certifies that it and all of its affiliates, (if it has affiliates), collect(s) the appropriate taxes.
  - All agencies participating in this Contract are exempt from Federal Taxes, such as excise and transportation. Exemption forms submitted by the Vendor will be executed and returned by the using agency.

- c. Prices offered are not to include any personal property taxes, nor any sales or use tax (or fees) unless required by the North Carolina Department of Revenue.
  - d. **Durham Public Schools is NOT tax exempt** unless otherwise indicated; tax must be computed and added to your bid as a separate line item. Any itemized shipping charges are also subject to tax. When invoiced, tax should be invoiced as a separate line item.
5. **SITUS:** The place of this Contract, its situs and forum, shall be North Carolina, where all matters, whether sounding in Contract or tort, relating to its validity, construction, interpretation and enforcement shall be determined.
6. **GOVERNING LAWS:** This Contract is made under and shall be governed, construed and enforced in accordance with the laws of the State of North Carolina, without regard to its conflict of laws rules.
7. **PAYMENT TERMS:** Payment terms are Net not later than 30 days after receipt of correct invoice or acceptance of goods, whichever is later. The using agency is responsible for all payments to the Vendor under the Contract. Payment by some agencies may be made by procurement card, if the Vendor accepts that card (Visa, MasterCard, etc.) from other customers, and it shall be accepted by the Vendor for payment under the same terms and conditions as any other method of payment accepted by the Vendor. If payment is made by procurement card, then payment may be processed immediately by the Vendor.
8. **AFFIRMATIVE ACTION:** The Vendor will take affirmative action in complying with all Federal and State requirements concerning fair employment and employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or disability.
9. **INTELLECTUAL PROPERTY INDEMNITY:** Vendor shall hold and save Durham Public Schools, its officers, agents and employees, harmless from liability of any kind, including costs and expenses, resulting from infringement of the rights of any third party in any copyrighted material, patented or unpatented invention, articles, device or appliance delivered in connection with this contract.
10. **ADVERTISING:** Vendor agrees not to use the existence of this Contract or the name of Durham Public Schools of North Carolina as part of any commercial advertising or marketing of products or services. A Vendor may inquire whether Durham Public Schools is willing to act as a reference by providing factual information directly to other prospective customers.
11. **ACCESS TO PERSONS AND RECORDS:** During and after the term hereof, the State Auditor and any using agency's internal auditors shall have access to persons and records related to this Contract to verify accounts and data affecting fees or performance under the Contract, as provided in G.S. 143-49(9).
12. **ASSIGNMENT:** No assignment of the Vendor's obligations nor the Vendor's right to receive payment hereunder shall be permitted.  
  
However, upon written request approved by the issuing purchasing authority and solely as a convenience to the Vendor, Durham Public Schools may:
  - a) Forward the Vendor's payment check directly to any person or entity designated by the Vendor, and
  - b) Include any person or entity designated by Vendor as a joint payee on the Vendor's payment check.



In no event shall such approval and action obligate Durham Public Schools to anyone other than the Vendor and the Vendor shall remain responsible for fulfillment of all Contract obligations. Upon advance written request, Durham Public Schools, in its unfettered discretion, approve an assignment to the surviving entity of a merger, acquisition or corporate reorganization, if made as part of the transfer of all or substantially all of the Vendor's assets. Any purported assignment made in violation of this provision shall be void and a material breach of this Contract.

### **13. INSURANCE:**

**COVERAGE** - During the term of the Contract, the Vendor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Contract. As a minimum, the Vendor shall provide and maintain the following coverage and limits:

a. **Worker's Compensation** - The Vendor shall provide and maintain Workers Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$500,000.00, covering all of Vendor's employees who are engaged in any work under the Contract. If any work is subcontracted, the Vendor shall require the sub-Contractor to provide the same coverage for any of his employees engaged in any work under the Contract.

b. **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$1,000,000.00 Combined Single Limit. (Defense cost shall be in excess of the limit of liability.)

c. **Automobile** - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the Contract. The minimum combined single limit shall be \$250,000.00 bodily injury and property damage; \$250,000.00 uninsured/underinsured motorist; and \$2,500.00 medical payment.

**REQUIREMENTS** - Providing and maintaining adequate insurance coverage is a material obligation of the Vendor and is of the essence of this Contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Vendor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this Contract. The limits of coverage under each insurance policy maintained by the Vendor shall not be interpreted as limiting the Vendor's liability and obligations under the Contract.

**14. GENERAL INDEMNITY:** The Vendor shall hold and save Durham Public Schools, its officers, agents, and employees, harmless from liability of any kind, including all claims and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Contract, and from any and all claims and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by the Vendor in the performance of this Contract and that are attributable to the negligence or intentionally tortious acts of the Vendor provided that the Vendor is notified in writing within 30 days that Durham Public Schools has knowledge of such claims. The Vendor represents and warrants that it shall make no claim of any kind or nature against Durham Public Schools agents who are involved in the delivery or processing of Vendor goods or services to Durham Public Schools. The representation and warranty in the preceding sentence shall survive the termination or expiration of this Contract.

15. **INDEPENDENT CONTRACTOR:** Vendor shall be considered to be an independent contractor and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. Vendor represents that it has, or will secure at its own expense, all personnel required in performing the services under this contract. Such employees shall not be employees of, or have any individual contractual relationship with Durham Public Schools.
16. **KEY PERSONNEL:** Vendor shall not substitute key personnel assigned to the performance of this contract without prior written approval by Durham Public Schools assigned Contract Lead. The individuals designated as key personnel for purposes of this contract are those specified in the RFP and persons identified in Vendor's proposal.
17. **SUBCONTRACTING:** Work proposed to be performed under this contract by the Vendor or its employees shall not be subcontracted without prior written approval of the State's assigned Contract Administrator. Unless otherwise indicated, acceptance of a Vendor's proposal shall include approval to use the subcontractor(s) that have been specified therein in accordance with paragraph 20 of Attachment I: Instructions to Vendor.
18. **TERMINATION FOR CONVENIENCE:** Durham Public Schools may terminate this contract at any time by providing 30 days' notice in writing from Durham Public Schools to the Vendor. In that event, all finished or unfinished deliverable items prepared by the Vendor under this contract shall, at the option of Durham Public Schools, become its property. If the contract is terminated by Durham Public Schools as provided in this section, Durham Public Schools shall pay for services satisfactorily completed by the Vendor, less any payment or compensation previously made.
19. **CONFIDENTIALITY:** Any State information, data, instruments, documents, studies or reports given to or prepared or assembled by or provided to the Vendor under this contract shall be kept as confidential, used only for the purpose(s) required to perform this contract and not divulged or made available to any individual or organization without the prior written approval of Durham Public Schools.
20. **CARE OF PROPERTY:** The Vendor agrees that it shall be responsible for the proper custody and care of any property furnished it by Durham Public Schools for use in connection with the performance of this contract or purchased by or for Durham Public Schools for this contract, and Vendor will reimburse Durham Public Schools for loss or damage of such property while in Vendor's custody.
21. **PROPERTY RIGHTS:** All deliverable items and materials produced for or as a result of this contract shall become the property of Durham Public Schools, and Vendor hereby assigns all ownership rights in such deliverables, including all intellectual property rights, to Durham Public Schools; provided, however, that as to any preexisting works imbedded in such deliverables, Vendor hereby grants Durham Public Schools a fully-paid, perpetual license to copy, distribute and adapt the preexisting works.
22. **OUTSOURCING:** Any Vendor or subcontractor providing call or contact center services to Durham Public Schools of North Carolina shall disclose to inbound callers the location from which the call or contact center services are being provided.

If, after award of a contract, the contractor wishes to relocate or outsource any portion of the work to a location outside the United States, or to contract with a subcontractor for the performance of any work, which subcontractor and nature of the work has not previously been disclosed to the State in writing, prior written approval must be obtained from the State agency responsible for the contract.

Vendor shall give notice to the using agency of any relocation of the Vendor, employees of the Vendor, subcontractors of the Vendor, or other persons performing services under a State contract to a location outside of the United States.

**23. COMPLIANCE WITH LAWS:** Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business and its performance in accordance with this contract, including those of federal, state, and local agencies having jurisdiction and/or authority.

**24. ENTIRE AGREEMENT:** This RFP and any documents incorporated specifically by reference represent the entire agreement between the parties and supersede all prior oral or written statements or agreements. This RFP, any addenda thereto, and the Vendor's proposal are incorporated herein by reference as though set forth verbatim.

All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable Federal or State statutes of limitation.

**25. AMENDMENTS:** This contract may be amended only by a written amendment duly executed by Durham Public Schools and the Vendor. The NC Division of Purchase and Contract shall give prior approval to any amendment to a contract awarded through that office.

**26. WAIVER:** The failure to enforce or the waiver by Durham Public Schools of any right or an event of breach or default on one occasion or instance shall not constitute the waiver of such right, breach or default on any subsequent occasion or instance.

**27. FORCE MAJEURE:** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

**28. SOVEREIGN IMMUNITY:** Notwithstanding any other term or provision in this contract, nothing herein is intended nor shall be interpreted as waiving any claim or defense based on the principle of sovereign immunity that otherwise would be available to Durham Public Schools under applicable law.

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## **COST PROPOSAL**

For: Durham Public Schools, School Nutrition Program (**61 School Sites**)

- 50** Fully Operational Kitchens
- 9** Satellite Facilities (**No service needed**)
- 2** Schools with no additional service (**No extra service needed**)
  
- 180** Number of Operational Days (2024-2025)

*See "6.0 Proposal" pages 12 - 19 for additional costing details and information to provide all requested pricing and costing information.*

## ATTACHMENT IV: CERTIFICATION OF FINANCIAL CONDITION

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Name of Vendor: \_\_\_\_\_

The undersigned hereby certifies that: [check all applicable boxes]

- The Vendor is in sound financial condition and, if applicable, has received an unqualified audit opinion for the latest audit of its financial statements.

Date of latest audit: \_\_\_\_\_

- The Vendor has no outstanding liabilities, including tax and judgment liens, to the Internal Revenue Service or any other government entity.
- The Vendor is current in all amounts due for payments of federal and state taxes and required employment-related contributions and withholdings.
- The Vendor is not the subject of any current litigation or findings of noncompliance under federal or state law.
- The Vendor has not been the subject of any past or current litigation, findings in any past litigation, or findings of noncompliance under federal or state law that may impact in any way its ability to fulfill the requirements of this Contract.
- He or she is authorized to make the foregoing statements on behalf of the Vendor.

**Note:** This is a continuing certification and Vendor shall notify the Contract Lead within 15 days of any material change to any of the representations made herein.

**If any one or more of the foregoing boxes is NOT checked, Vendor shall explain the reason in the space below:**

---

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Printed Name Title

**[This Certification must be signed by an individual authorized to speak for the Vendor]**

## **NON-APPROPRIATION/CANCELLATION**

Lessee's operations are funded under appropriations or budgetary approvals made by Durham Public Schools, on a fiscal year basis. For the fiscal year, Lessee has received all necessary approvals for the lease of the equipment subject to this Lease and for the payment of the rentals required under this Lease. While similar approvals are expected for each of the future fiscal years during the term of this Lease, such approvals cannot be assured. If, for any such fiscal year, necessary approvals are not received for the continuation of this Lease, then the Lessee shall have the right, exercisable by written notice delivered twenty (20) days prior to the expiration of the then current fiscal year, to terminate this Lease as of the last day of such current fiscal year, subject to the requirements that (a) all obligations of the Lessee under the Lease for the then current fiscal year shall be satisfied in full, (b) the Lessee shall package and return the equipment as directed by Lessor, with all costs of packaging, freight and insurance borne by Lessee and (c) if, within two (2) years after the effective date of termination, necessary approvals are received for the purchase or lease of equipment performing functions similar to those performed by the equipment subject to this lease, then the lessor, at its election, may (I) reinstate this Lease for a term equal to the unexpired term of this Lease as of the date of cancellation by providing like equipment or (II) have a right of refusal to be the seller or lessor in the Lessee's acquisition of like kind equipment. If Lessee purports to cancel this Lease under this Section, then Lessor, as a condition to acceptance of such cancellation, may require the written opinion of Lessee's counsel detailing specifically the circumstances giving rise to the right of cancellation and such counsel's affirmative opinion as to the existence of that right.

**Durham Public Schools**

By: \_\_\_\_\_

## Additional DPS School Nutrition Services Documentation

### FEDERAL PROGRAM REGULATIONS

The DPS School Nutrition Programs receiving goods and services through this RFP/subsequent Contract are Federally-funded programs operated under the authority of the United States Department of Agriculture (USDA). This RFP/Contract and the subsequent Contract shall comply with 7 CFR Parts 210, 220, 225, 250, 3015 and 3016 and applicable cost circulars issued by the Office of Management and Budget (OMB) including A-87 Cost Principals, A -102 Administrative Requirements, and A -133 Audit Requirements.

In compliance with this RFP, and subject to all conditions required herein, the undersigned offers agrees to furnish and deliver, any or all items upon which prices are bid, at the prices set correlating to each item, within the time specified.

By responding to this RFP, the Vendor certifies that the proposal is made without prior understanding, agreement, or connection with any firm, corporation, or person submitting a proposal for the same items, and is in all respects fair and without collusion or fraud. The Vendor also certifies no one connected to this company has had any connection with the development or drafting of this RFP/CONTRACT. Under penalty of perjury, the undersigned Vendor certifies that this proposal has not been arrived at collusively or otherwise in violation of Federal or State (North Carolina) laws or regulations. By signing this Certification, the individual whose name is shown assures that the Vendor has read and understands all the General Terms and Conditions in this RFP and agrees to be bound by them, and is authorized to submit proposals on behalf of the Vendor.

If Vendors have questions, issues, or exceptions regarding any term, condition, or other component within this RFP, those must be submitted as questions in accordance with the instructions in Section 1.1 PROPOSAL QUESTIONS. If Durham Public Schools determines that any changes will be made as a result of the questions asked, then such decisions will be communicated in the form of an RFP addendum. Durham Public Schools may also elect to leave open the possibility for later negotiation and amendment of specific provisions of the Contract that have been addressed during the question and answer period. Other than through this process, Durham Public Schools rejects and will not be required to evaluate or consider any additional or modified terms and conditions submitted with Vendor's proposal. This applies to any language appearing in or attached to the document as part of the Vendor's proposal that purports to vary any terms and conditions or Vendors' instructions herein or to render the proposal non-binding or subject to further negotiation. Vendor's proposal shall constitute a firm offer. **By execution and delivery of this RFP Response, the Vendor agrees that any additional or modified terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect, and will be disregarded. Noncompliance with, or any attempt to alter or delete, this paragraph shall constitute sufficient grounds to reject Vendor's proposal as nonresponsive.**

If a Vendor desires modification of the terms and conditions of this solicitation, it is urged and cautioned to inquire during the question period, in accordance with the instructions in this RFP, about whether specific language proposed as a modification is acceptable to or will be considered by Durham Public Schools. Identification of objections or exceptions to Durham Public Schools terms and conditions in the proposal itself shall not be allowed and shall be disregarded or the proposal rejected.

Contact with anyone working for or with Durham Public Schools regarding this RFP other than the State Contract Specialist named on the face page of this RFP in the manner specified by this RFP shall constitute grounds for rejection of said Vendor's offer, at the State's election.

**ADDENDA ACKNOWLEDGEMENT**

Addenda issued are hereby acknowledged by bidder and become part of the RFP/CONTRACT. It is the Vendor's responsibility before bid opening to determine they have received all addenda issued by the school district.

The cut-off date for Addenda Notification to Vendors is **April 9, 2024 by 9 AM.**

**Vendor: Please insert date of each Addendum received below to acknowledge receipt and inclusion to these contract documents.**

<b>Addendum 1</b>	<b>Date</b> :		<b>Addendum 2</b>	<b>Date</b> :		<b>Addendum 3</b>	<b>Date</b> :	
<b>Addendum 4</b>	<b>Date</b> :		<b>Addendum 5</b>	<b>Date</b> :		<b>Addendum 6</b>	<b>Date</b> :	
<b>Addendum 7</b>	<b>Date</b> :		<b>Addendum 8</b>	<b>Date</b> :		<b>Addendum 9</b>	<b>Date</b> :	
<b>Addendum 10</b>	<b>Date</b> :							

**This solicitation is intended to promote competition.** If the language, specifications, terms, and conditions or any combination thereof restricts or limits the requirements in this solicitation to a single source, it must be the responsibility of the interested Vendor to notify **the Durham Public Schools Purchasing Department**, in writing, at [Dist.Purchasing@dpsnc.net](mailto:Dist.Purchasing@dpsnc.net), so as to be received five (5) working days after the date the RFP is issued by the School District. The solicitation may or may not be changed, but a review of such notification will be made prior to the award of a Contract.

**Durham Public Schools, School Nutrition Services** refers to and uses the following NC Code in the evaluation of proposal information during the period of receipt through the award:

**North Carolina Purchase & Contract Administrative Code Section .0309 EVALUATION OF BIDS**

(c) During the period of evaluation and prior to award, only the information provided in the tabulation (bottom line totals) is public record. Possession of offers, including any accompanying information submitted with the offers, shall be limited to persons in the agency who are responsible for handling the offers and accompanying information, and to others determined necessary by the agency which issued the solicitation document, for the purpose of evaluation and award of contract. Vendor participation in the evaluation process shall not be permitted. Any communication with a Vendor that may be necessary for the purpose of clarification of its offer shall be conducted by the agency which issued the solicitation document. After award of the contract or when the need for the item or service is canceled, the complete file shall be available to any interested party with the exception of trade secrets subject to the provisions of Rules .1501 and .1518 of this Subchapter.



- 1.0 MISSION, LEGAL AFFILIATION, DISTRICT PROFILE AND SPECIAL CONDITIONS
- 2.0 PRICING, MINIMUM SHIPMENTS AND SPECIAL ORDERS
- 3.0 GENERAL PROVISIONS OF THE RFP/CONTRACT
- 4.0 DISTRIBUTOR QUALIFICATION, RESPONSIBILITIES, INSURANCE, PERSONNEL AND RECALL
- 5.0 GENERAL DISTRIBUTOR PROPOSAL DIRECTIONS AND REQUIREMENTS
- 6.0 PROPOSAL AWARD METHOD
- 7.0 FLAT FIXED FEE - DISTRIBUTOR DETERMINATION
- 8.0 PRODUCE DISTRIBUTORS RESPONSIBILITIES
- 9.0 PRODUCT QUALITY, PRODUCT SPECIFICATIONS AND RECOURSE FOR MISREPRESENTATION
- 10.0 ESTIMATED QUANTITIES AND DISTRICT INFORMATION AFFECTING PURCHASES
- 11.0 TIE PROPOSALS, PROPOSAL ERRORS, PROPOSAL REJECTION & USE OF PIGGYBACK CLAUSE
- 12.0 PRELIMINARY AWARD, OPTION TO DECLINE. PROTEST PROCEDURE AND FINAL AWARD
- 13.0 SUBSTITUTION AND DISCONTINUED PRODUCT REQUIREMENTS
- 14.0 VALUE ADDED OPTIONS AND SERVICES
- 15.0 TRANSMITTAL OF DELIVERY ORDERS
- 16.0 BILLING AND PAYMENT REQUIREMENTS
- 17.0 SITE DELIVERIES
- 18.0 THE BUY AMERICAN PROVISION
- 19.0 OPTION FOR CONTRACT RENEWAL
- 20.0 FIXED – FEE ADJUSTMENT FOR FUEL PRICE INCREASE
- 21.0 PRODUCT USAGE REPORTS
- 22.0 RECORDS RETENTION REQUIREMENTS
- 23.0 ASSURANCE OF NON-COLLUSION
- 24.0 ASSURANCES REGARDING LEGAL AND ETHICAL MATTERS
- 25.0 REMEDIES FOR NON-PERFORMANCE OF CONTRACT AND TERMINATION OF CONTRACT
- 26.0 FORCE MAJEURE
- 27.0 WAIVER
- 28.0 RIGHT TO ASSURANCE
- 29.0 REGULATORY COMPLIANCE

## ANNUALLY REQUIRED TERMS AND AGREEMENTS - ATTACHMENTS

ATTACHMENT A – BRAND/GRADE LABELS (IF APPLICABLE)

ATTACHMENT B – HACCP SUMMARY

ATTACHMENT C – EVIDENCE OF REQUIRED INSURANCE

ATTACHMENT D – LUNSFORD ACT COMPLIANCE

ATTACHMENT E – FOOD RECALL POLICY/PROCEDURES

ATTACHMENT F – PRODUCE - GAP CERTIFICATION

ATTACHMENT G – HUB CERTIFICATION

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

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

ATTACHMENT J – IRAN DIVESTMENT REQUIREMENT FORM

### 1.0 MISSION, LEGAL AFFILIATION, FEDERAL COMPLIANCE, DISTRICT PROFILE AND SPECIAL CONDITIONS

1.1 **Durham Public Schools**, herein after referred to as the **School District**, is requesting to receive Proposals from an OFFERING ENTITY, herein after referred to as the **Distributor**, defined as a company that is offering to provide the services of ordering, warehousing and delivery of food and supplies for use in the School District's School Nutrition Program. **School District** refers to all schools serviced by the Local Education Authority (LEA).

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

1.3 A **SCHOOL DISTRICT PROFILE** is provided which includes pertinent information about the district such as the school names, addresses and current average daily breakfast and lunch meals served, average daily snacks served, district payment schedule and, where appropriate, average daily participation in the Summer Food Service Program, Seamless Summer Option or other meal program. The profile is found in the Attachments section of the RFP/Contract. A School District Calendar will be provided to the awarded Distributor.

1.4 The School District retains the right to add **SPECIAL CONDITION(s)** to this RFP which details conditions that are specific to the School District. Special Condition(s) shall be titled as such and attached to the RFP in the Attachments Section. Special Conditions established by the School District as part of this RFP, and the Distributor's response to the Special Condition(s), shall become part of the Contract when awarded. The School District renewing a proposal may update or delete Special Conditions of the original Contract; however, the District may not make changes that would substantially change the terms of the original agreement. If Special

Conditions are a part of this RFP, they are included in the Attachments section of the RFP/Contract.

## **2.0 PRICING, REBATES AND BILL BACKS, AND SPECIAL ORDERS**

2.1 **PRICING** will be provided monthly to the SCHOOL DISTRICT), in written format. The SCHOOL DISTRICT understands that pricing of items is dependent upon the market conditions, supply conditions and amount of processing each item requires. The delivery fee for each item will remain constant throughout the proposal term and in any subsequent renewals.

2.2 **MANUFACTURER REBATES AND BILL BACKS** - The regulations at 7 CFR 210.21(t), 220.16(e) and 215.14a(d) require that school food authorities (SCHOOL DISTRICTS) must include in all cost - reimbursable contracts, contracts including cost reimbursable provisions and solicitations for such contracts, provisions which limit use of non-profit school foodservice account funds to costs resulting from proper procurements and contracts. Specifically, the regulations require that SCHOOL DISTRICTS may use nonprofit school food service account funds to pay only for allowable costs - those costs net of all applicable discounts, rebates and other applicable credits. The regulations at, 7 CFR 200, Office of Management and Budget Guidance, 7 CFR 210.21(c) (i), 215.14a(c) and 220.16 (c) ensure that School Food Authorities receive the full benefit of any applicable discounts, rebates or credits intended specifically for the School Districts by manufacturers, suppliers and/or redistributors arising from purchases made under this RFP (hereinafter "Applicable Discounts, Rebates or Credits"). Distributor may receive and retain earned income, defined as income and profit earned by the distributor for work or services performed by the distributor and/or consistent with industry standards. Some examples of earned income include but are not limited to, freight management, procurement leverage, consolidated warehousing, quality assurance, performance-based product marketing, and management of competitive conditions. The total price is not adjusted for earned income.

2.3 **SPECIAL ORDERS:** The SCHOOL DISTRICT reserves the rights to make special order requests of the awarded distributor for items needed to support the School Nutrition Program and special events, menu days and themed programs. Upon request, the distributor will provide costing and delivery methods to the School Nutrition Services Department.

## **3.0 GENERAL PROVISIONS OF THE RFP/CONTRACT**

3.1 This RFP and all attachments and addenda hereto are awarded by the School District and will become the Contract between the School District and the awarded Distributor.

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

3.3 The SCHOOL DISTRICT reserves the right to reject any or all proposals, or parts thereof, and to waive informalities and/or irregularities thereof.

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

3.5 **This solicitation is intended to promote competition.** If the language, specifications, terms, and conditions, or any combination thereof, restricts or limits the requirements in this solicitation to a single source; it is the responsibility of the interested Distributor to notify **the DPS Purchasing Department**, in writing via email, at [Dist.Purchasing@dpsnc.net](mailto:Dist.Purchasing@dpsnc.net) no more than five (5) working days after the date the RFP/CONTRACT is issued by the School District. The solicitation may or may not be changed, but a review of such notification will be made prior to the award of a Contract.

3.6 **A WRITTEN ADDENDUM IS THE ONLY OFFICIAL RESPONSE METHOD WHEREBY INTERPRETATION, CLARIFICATION AND ADDITIONAL INFORMATION REGARDING THIS PROPOSAL CAN BE GIVEN.** Once issued, all addenda shall become part of this contract. All addenda will be issued electronically to each Distributor known to have received the initial RFP/Contract. Addenda may be issued from the school district within ten (10) calendar days prior to the proposal opening date. However, before submitting an RFP/Contract, it shall be the responsibility of each Distributor to determine whether additional addenda were issued. **INQUIRIES** concerning interpretation or additional clarification or additional information pertaining to this RFP must be made in writing (electronic accepted) on behalf of the School District within twelve (12) calendar days prior to the proposal opening date. For inquiries contact [Dist.Purchasing@dpsnc.net](mailto:Dist.Purchasing@dpsnc.net).

#### **4.0 DISTRIBUTOR QUALIFICATION, RESPONSIBILITIES, INSURANCE, PERSONNEL AND RECALL**

4.1 The Distributor awarded the Contract must be fully acquainted with terms and conditions relating to the scope and restrictions involved in the execution of the work as described. Failure or omission of the Distributor to be familiar with existing conditions shall in no way relieve the company of obligation with respect to this Contract.

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

#### **4.3 DISTRIBUTOR RESPONSIBILITIES:**

4.3.1 Communicate continuously via electronic messaging with the school district concerning product movement levels, inventory, manufacturer shortages, etc.

4.3.2 Interface with Manufacturers and product packers on school district problems relating to product levels and product quality and provide the school district notification of supplier issues including but not limited to: production, shortages, transportation or product discontinuance. **A Manufacturer Letter describing the circumstances and effective dates is required from the Distributor to the School District for documentation.**

4.3.3 Provide prompt response to customer issues regarding product quality, product delivery, and product damage, credits or billing transaction documentation. Failure to resolve customer issues in a timely manner may result in contract termination, or future proposal disqualification;

4.3.4 Provide timely cost and usage information reports as requested by the School District

- 4.3.5 The Distributor shall provide documentation of **Farmer and/or Packer Information** indicating product quality, packaging and case size. **ATTACHMENT A**
- 4.3.6 All Distributors submitting proposals must provide a current **Hazard Analysis Critical Control Point Summary (HACCP)** describing the Distributors on – site food sanitation and safety practices meeting federal regulation. The awarded Distributor must maintain a current HACCP plan through the duration of this contract. **ATTACHMENT B**
- 4.3.7 The School District reserves the right to request of the Distributor documentation, on-site inspections of facilities, delivery vehicles and records at any time during the Contract period.
- 4.3.8 The warehouse facilities and delivery vehicles shall be clean, be free of insects and rodents, and meet all federal and state regulations for storing and delivery of dry, chilled, and frozen food products.
- 4.3.9 The awarded Distributor will deliver all item(s) to the School District at the proposed price, in accordance with the item specifications and the terms and conditions contained in this RFP/Contract. **Sub-contracting of this Contract is not permitted** for any reason without the prior written permission of the School District.
- 4.4 **DISTRIBUTOR INSURANCE**
- 4.4.1 The Distributor awarded the Contract shall maintain all necessary insurance for the period during which purchases are made, including Comprehensive General Liability Insurance, Property Damage Insurance, Workers Compensation Insurance, and Automobile Liability Insurance. The Distributor must provide **Evidence of Insurance** in that it currently has, and agrees to purchase and maintain, during its performance under this Contract, from one or more insurance companies authorized to do business in the State of North Carolina. In addition, the School District Board of Education shall be named by endorsement as an additional insured on the General and Automobile Liability policies.
- 4.4.2 **Certificates of such insurance** shall be furnished by Provider to the School District Contact and shall contain an endorsement to provide the School System at least 10 days' written notice of any intent to cancel or terminate by either Provider or the insuring company. Failure to furnish insurance certificates or maintain such insurance shall be a default under this contract and shall be grounds for immediate termination of this Contract. **ATTACHMENT C** - provide summary and mail certificates to school district.
- 4.4.3 **Vehicle Bodily Injury and Property Damage** - The Distributor shall maintain bodily injury and property damage liability insurance covering all owned, non-owned and hired vehicles. The policy limits of such insurance shall not be less than \$1,000,000 combined single limit each person/each occurrence.
- 4.4.4 **Commercial General Liability** – Distributor shall maintain Commercial General Liability insurance that shall protect the Distributor from claims of bodily injury or property damage which arise from performance under this Contract in the amount of \$1,000,000 each occurrence and Personal & Advertising Injury \$1,000,000 each occurrence with \$2,000,000 General Aggregate.
- 4.4.5 **Worker's Compensation** - The Distributor shall meet the statutory requirements of the State of North Carolina for worker's compensation coverage and employer's liability insurance of all employees participating in the provision of services under this contract.

4.4.6 Should any of the above required insurance be canceled or terminated before the expiration, the issuing company will provide at least ten (10) days written notice to the School District.

#### 4.5 DISTRIBUTOR'S PERSONNEL

4.5.1 The Distributor's personnel are to present a professional appearance at all times while on school property. Personnel shall be neat, clean, well groomed, properly uniformed and conduct themselves in a respectable and courteous manner while performing duties at any School District facilities.

4.5.2 The Distributor's personnel are forbidden to consume alcohol or use illegal drugs, use tobacco, or possess firearms on school property at any time.

4.5.3 The employment of unauthorized aliens by the Distributor is considered a violation of Section 247A (e) of the Immigration Reform and Control Act of 1986. If the Distributor knowingly employs unauthorized aliens, such a violation shall also be cause for cancellation of the Contract.

4.6 **LUNSFORD ACT.** The Distributor acknowledges that N.C. General Statute 14-208.18 prohibits anyone required to register as a sex offender under Article 27A of Chapter 14 of the General Statutes from knowingly being on the premises of any school. This prohibition applies to persons required to register under Article 27A who have committed any offense in Article 7A of Chapter 14 or any offense where the victim of the offense was under the age of 16 years at the time of the offense. **LUNSFORD ACT** compliance is addressed in the [ATTACHMENT D.](#)

4.7 **PRODUCT RECALL:** The Distributor awarded the Contract shall be expected to voluntarily comply with all Federal, State and local mandates regarding the **Identification and Recall** of foods from the commercial and consumer marketplace. The Distributor shall have a process in place to immediately respond to a manufacturer food recall; the process must include accurate and timely communications to the School District and assurance that unsafe products are identified and removed from school sites in an expedient, effective and efficient manner. The Distributor is responsible for any consequences arising from the failure to make immediate notification. A one-page summary of the **Distributor's Food Recall Policy/Procedures** is required to be submitted with the proposal in [ATTACHMENT E.](#)

#### 5.0 DISTRIBUTOR PROPOSAL DIRECTIONS AND REQUIREMENTS

5.1 **THESE PROPOSAL ERRORS ARE NON – NEGOTIABLE AND WILL RESULT IN A NON – RESPONSIVE PROPOSAL:**

- **NO ORIGINAL SIGNATURE ON THE OFFICIAL DISTRIBUTOR PROPOSAL CERTIFICATION FORM**
- **ANY CHANGE TO RFP/CONTRACT LANGUAGE BY THE DISTRIBUTOR**

5.2 **BUY AMERICAN POLICY FOR FRUITS AND VEGETABLES - U.S grown and packed fruits and vegetables are required.**

6.0 **AWARD METHOD: COMPETITIVE NEGOTIATION – SCORED RESULTS**

7.0 **FIRM FIXED FEE - DISTRIBUTOR DETERMINATION**

7.1 **FIRM FIXED FEE** –The Fixed Fee shall encompass the costs of the product's distribution, financing and profit, production losses, analysis cost, waste, labor, overhead, and transportation costs.

7.2 The Fixed-Fee shall remain firm for the duration of the Contract, and for the duration of any Summer Nutrition Programs offered by the School District and any future Contract renewal period(s). Exceptions: Fuel Increase Force Majeure.

7.3 The Fixed-Fee will be the same for ALL items.

7.4 **FIXED FEE AND PRODUCT SUBSTITUTION:** In the event of a substitution, the Fixed - Fee charged by the Distributor shall also apply to all other pre-approved brands in that specification and any optional brand priced or offered by the Distributor and approved by the School District for that product specification.

## 8.0 PRODUCE DISTRIBUTORS RESPONSIBILITIES

8.1 **ORDERING:** The awarded Distributor will provide via e-mail as agreed with the School District, a monthly produce pricing document for all items offered.

8.2 **COUNTRY OF ORIGIN:** USDA regulation requires the Country, or Countries of Origin, of ALL Non-Domestic produce from the Distributor to be **approved in advance** by the School District School Nutrition Administrator. The distributor is required to meet the Food Safety, Recall, and Buy American federal requirement. Changes to the Country of Origin, not specified on the proposal document, require notification and written approval in advance of delivery of the product to the School District.

8.3 **PRODUCE - GAP CERTIFICATION:** **ATTACHMENT F** Good Agricultural Practices (GAP) for Produce served to students is an important marketing and health issue for the produce industry. Growers providing produce to packers and serving school districts under this RFP/Contract must have a verified and audited GAP program in place to assure produce is free of contamination. A list of GAP certified growers, listed by state, is available at the following website:

<http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.dotemplate=TemplateD&page=FreshFVGAPGHPStateIndex>

## 9.0 PRODUCT QUALITY, PRODUCT SPECIFICATIONS AND RECOURSE FOR MISREPRESENTATION

9.1 All food products supplied by the Distributor awarded the Contract will comply with Standards of Identity, **Quality** and Fill as described in 21 CFR Part 100 of the Food, Drug and Cosmetic Act regulations. All canned and frozen fruit and vegetable products delivered are to be from the most recent manufacturer pack date.

9.2 School Districts have automatic product protection recourse against suppliers for products that are **misrepresented. According to U.S. Federal regulations, the supplier whose name and address appears on the package is the responsible party.** The Distributor awarded this Contract is expected to take immediate action to correct any situation in which product integrity is violated.

## 10.0 ESTIMATED QUANTITIES AND DISTRICT INFORMATION AFFECTING PURCHASES

10.1 Quantities reflected in this RFP are estimates based on the combined projected needs of the School District during the Contract period. These quantities are the best estimate of

anticipated needs available at the time of publication of this RFP, but the accuracy of this estimate may be affected by numerous factors including but not limited to, budgetary adjustments, product pricing, availability of Federal funds or other subsidies, changing market forces, or unintentional errors or omissions. Actual needs may be greater or less than the estimated quantities provided.

10.2 The Combined Product Usage Estimate is a guide to potential product usage of the school district, but under no circumstances guarantees product usage.

## **11.0 TIE PROPOSALS, PROPOSAL ERRORS, PROPOSAL REJECTION AND USE OF PIGGYBACK CLAUSE**

11.1 **TIE PROPOSAL:** In the event of a tie on a proposal, the deadlock will be decided by using the following order:

- Documented evidence of unresolved service issues with a Distributor.
- Distributor is certified as Small Business/Minority Business/Women Owned Business.
- All else being equal, by coin toss by the School District with tie Distributor present.

11.2 **REJECTION:** The School District reserves the right to reject any and all proposals, or any parts thereof, and request resubmission of proposals from all distributors as deemed in the best interest of the School District.

11.3 **PROPOSAL ERROR:** In the event of an error in a product specification or pricing, that item will be **excluded** from the tabulation. Any item excluded from the tabulation will be excluded for ALL proposals for evaluation purposes only. Multiple errors may be rationale for the School District's disqualification of a Distributor proposal.

11.4 **PIGGYBACK CLAUSE:** The Piggyback Clause is a Legal Provision that may be employed by a local school district in the circumstance of no proposals received or all proposals received are disqualified. If employed, documented Distributor Agreement, Legal Advertisement of Waiver for Competitive Bidding and Local Board Approval by both Districts is required. Pursuant to **G. S. 143-139 (g)**, when a Local Board of Education (BOE) determines it is in the best interest of the member district over which it has authority, the requirement for competitive bidding may be waived for the purchase of food and supplies contained herein, including all subsequent Amendments, to allow the member district to purchase from the bid/contract with any other member district. The member district's BOE, having approved the waiver for competitive bidding, may enter into a new and separate contract with a Distributor who has contracted with another district provided the district's BOE is in agreement and the Distributor is willing to extend the same or more favorable prices, terms and conditions to the district for which competitive bidding has been waived.

## **12.0 PRELIMINARY AWARD, OPTION TO DECLINE, PROTEST PROCEDURE AND FINAL AWARD**

12.1 **Awards are considered "PRELIMINARY" until the following is completed:**

12.1.1 The School District reviews the scoring sheet for each distributor, and ensures compliance with all instructions to ascertain that the offer is made in accordance with the terms and conditions of the RFP. School officials who find error(s) in calculations will make adjustments and corrections and notify distributors individually. The distributor scores will be shown in the **Preliminary Award letter** sent to all distributors.

12.2 **DISTRIBUTOR OPTION TO DECLINE:** The Distributor awarded the Contract has the option to decline the award. Any award declined by a Distributor will be awarded to the qualified Distributor with next highest score. If the first Distributor awarded the Contract chooses to decline the award, **the Distributor is required to provide a written request of relief to the School**



**District within five (5) working days after the Preliminary Award Letter is received from the School District.**

### **12.3 PROTEST PROCEDURE**

Protests must be submitted in writing to the issuing School District. Protests must be received within 10 calendar days from the date of the Preliminary Award Letter and provide specific written supporting documentation for the protest. Protests should be made to the School District.

### **12.4 FINAL AWARD**

The Local School District issues the approved and signed **Official Certification Form** to the Awarded Distributor and issues local **Purchase Order** to the Distributor as the Final Award.

## **13.0 SUBSTITUTION AND DISCONTINUED PRODUCT REQUIREMENTS**

13.1 The Distributor awarded the Contract shall order goods from manufacturers in economical quantities and maintain inventories at a sufficient level to prevent out of stock situations while avoiding excessive inventories which may be counter-productive to efficiency. Product substitutions due to out of stock situations should be held to an absolute minimum. Distributor "out of stock" percentage is expected at 3% of invoice orders or less. Excessive substitution due to Distributor order errors may jeopardize future business from the School District or invoke Termination Proceedings.

13.2 Any Distributor substitution that is not pre-approved, in advance, in writing by the School Nutrition Director or her/his designee, will be rejected by the School District. The School District will not be responsible to purchase the quantity of School District estimated usage affected by Distributor substitution.

13.3 To facilitate delivery schedules and provide appropriate substitutions in out - of stock situations for accommodation of students with food allergies, the awarded distributor **MUST** e-mail or fax the school district, for pre-approval by the District, current specification sheets with ingredient lists, nutritional analysis and allergens for each proposed substitution a minimum of **24 HOURS IN ADVANCE** of the delivery (upon request). The Distributor may substitute pre-approved brands within a specification without supplying product specifications, but **24 HOURS ADVANCE** notification of substitution is still required. The Distributor and/or manufacturer are responsible for any damages to customers due to unidentified allergens from products substituted for brands pre-approved by this Contract.

13.4 Any substitution for an item brought in by the Distributor to alleviate a **manufacturer out of stock**, or discontinued production, must be (1) of the same or higher quality as the regular stock, (2) the same or similar cost as the regular stock and (3) priced at the same flat fixed-rate fee per case as the original product. Substituted products are approved by the School District.

## **14.0 VALUE ADDED OPTIONS AND SERVICES**

14.1 Value Added Options and Services including, but not limited to product merchandisers and other purchasing incentives will not be considered as a factor in evaluating the award of this proposal.

## **15.0 TRANSMITTAL OF DELIVERY ORDERS**

15.1 Orders will be submitted to the Distributor awarded the Contract by the School District on a schedule and by a method that is mutually agreeable to both parties. The School District prefers

the shortest lead time possible in order to minimize inventory levels at schools. Order requirements not covered in this section should be listed in Special Conditions.

15.2 Orders may be transmitted electronically or by fax as mutually agreed upon by the Distributor awarded the Contract and the School District. If Internet-based, electronic ordering systems are used, the Distributor will provide training on use of their ordering system to necessary School District personnel. The Distributor must block non-bid items from electronic ordering systems available to the School District.

15.3 The Distributor awarded the Contract shall provide a representative to screen orders, discuss orders with the School Nutrition Director, or designee, **on a weekly basis**; the representative shall ensure compliance with scheduled delivery, discuss substitutions and shortages, facilitate approval of substitutions, finalize orders for delivery, and screen delivered orders for shortages, errors, and pricing mistakes.

## **16.0 BILLING AND PAYMENT REQUIREMENTS**

16.1 Payment will be due to the Distributor awarded the Contract within thirty (30) days of date of the monthly statement, or more frequently, as designated by the School District.

16.2 The Distributor awarded the Contract shall provide the School District separate invoices for each school site.

16.3 The Distributor awarded the Contract shall issue credit memorandums for returned/picked up items within ten (10) business days from the request to do so.

16.4 Failure to issue credit memorandums in a timely basis shall constitute grounds for withholding payments.

## **17.0 SITE DELIVERIES**

17.1 Deliveries shall be made to schools on a regular schedule between hours that are mutually agreed upon by the School Nutrition Director or designee and Distributor in a meeting after award of the Contract. Any deviation of the Distributor from the schedule will require notification of the School Nutrition Director, or designee.

17.2 Only one (1) Distributor delivery per school site per week is anticipated, but the School District reserves the right to require more/less than one delivery per week, as needed and volume requires. Known need for deliveries of more/less than one per school site per week shall be indicated within **Special Conditions**.

17.3 To the degree possible, delivery routes should feature dedicated trucks that deliver in sequence to district schools on a predictable time-table. Conflicts with arrival and departure of students may require Distributor changing delivery routes for safety concerns.

17.4 The Distributor shall be notified by the School District in advance of holidays, student vacation and teacher work days so that arrangements can be made for deliveries as approved by the School Nutrition Director or designee. The School District shall provide the Distributor the school calendar. The School District will make efforts to provide advance notification to the Distributor in the event of weather related closings.

17.5 Each Distributor delivery must be made in a single vehicle which will adequately protect frozen, dry, or chilled products in accordance with manufacturers/packers recommendations. Types of delivery vehicles used may be impacted by school sites and should be acquainted with facilities. All frozen food must be delivered in a completely hard frozen state. Items showing thaw

or deterioration in any form at the time of delivery will not be accepted. Any item delivered in other than proper condition will not be accepted.

17.6 Distributor drivers must deliver products into pantry, freezer or cooler rooms as designated by the unit manager. Drivers are not required to stow products on shelves, nor remove containers from master cases.

17.7 If a product is omitted from an order by the Distributor, or is delivered in unacceptable condition (defrosted frozen product or damaged containers, for example) replacement delivery must be made within 24 hours (if requested), longer with District permission, with no minimum shipment requirement to each site.

17.8 Distributor drivers and helpers shall request the authorized school cafeteria manager, or the approved designee, to verify the accuracy of quantities of each item, and condition of merchandise from a delivery ticket. A designated school receiver shall sign each delivery ticket. Variations from the norm i.e., shortages, damages, etc., shall be noted on each ticket by the designated school receiver and initialed by both the truck driver and school receiver. The Distributor shall not be required to issue credits for errors not detected at time of delivery, except for hidden damage or failure to meet specification.

17.9 Cartons must be marked with appropriate product identifying information as indicated on the Purchase Order and packaged in containers that are new, appropriately designed for the products, and sturdy enough to protect the products in the loading, transit, unloading, and storage process.

## 18.0 THE BUY AMERICAN PROVISION

18.1 The Distributor shall comply with the “Buy American” provision for Contracts that involve the purchase of agricultural products. Federal regulations require that all foods (Ingredients) purchased for School Nutrition Programs be of domestic origin to the maximum extent practicable. While rare, two (2) exceptions may exist:

18.1.1 Exceptions to the Buy American provision are possible when the product is not produced or manufactured in the U.S., in sufficient, reasonable and available quantities of a satisfactory quality; and competitive proposals reveal the cost of a domestic product is significantly higher than a non-domestic product or;

18.1.2 **Product(s) may qualify under the Richard B. Russell National School Lunch Act’s Buy American provision for purchasing food products used in School Nutrition Programs by providing**

**documentation from the manufacturer which states a minimum of 51% of the final processed product ingredients consist of agricultural commodities that are of U.S. origin.**

18.2 To meet food safety and recall regulations, the Distributor must notify the School Nutrition Director and the School Nutrition Director must provide written approval IN ADVANCE whenever there is a change of product sources, including when any Non-Domestic agricultural products are substituted for domestic agricultural products. The Distributor must submit written documentation to substantiate (availability or price) any non-domestic item included in this proposal with the exception of the following products: Pineapples, Mandarin Oranges, Olives, Tuna, Bananas and Coffee.

18.3 Any non-domestic product delivered to the School District, without the prior, written approval of the School Nutrition Director, shall be rejected. Should non-domestic substitutes that were not pre-approved, in writing, by the School Nutrition Director be delivered to the School

District and rejected, the Distributor shall be held accountable for all over-claims that result from failure to meet the School District's required meal pattern.

18.4 Agricultural products which are grown, canned or packed outside of the United States may be accepted by the school district (in writing) with proof from the manufacturer that poor Market conditions exist (weather, and/or supply availability of market); this requirement applies to both pre-approved and "private labels".

## 19.0 OPTION FOR CONTRACT RENEWAL AND PROCEDURES

19.1 Unless this Contract is renewed beyond the expiration of the Contract as stated on the Certification and Agreement, this Contract shall terminate July 31 of each contract year. The School District reserves the right to seek agreement of the Distributor to renew the Flat Fixed Fees of the original proposal award for a period not to exceed four (4) additional terms of one (1) year each at the same or lower rate.

19.2 The only accepted increase in the delivery of a Fixed - Fee will be based on fuel cost only as described in Section 20.0 of the RFP/Contract.

## 19.3 RENEWAL PROCEDURES

19.3.1 Distributors in Renewal status, are NOT required to attend the Annual Bid openings for the District.

19.3.2 The verbal Contract Renewal process may be initiated by either the school district or the Distributor in February of each year.

19.3.3 Renewal Documents as required by the School District: The Renewal Agreement, Updated RFP/Contract, and Attachments A- J, are to be completed, signed and returned to the School District by the Distributor no later than the Official Distributor proposal release date.

19.3.4 When the renewal is approved, the School District will return a signed copy of the **Renewal Agreement and Special Conditions Agreement**, to the Distributor.

19.3.5 The School District completed Purchase Order to the Distributor is the final approval of the Renewal Agreement.

## 20.0 FIXED – FEE ADJUSTMENT FOR FUEL PRICE INCREASE

20.1.1 The fixed - fee for fuel price increase may be adjusted mid-contract and at renewal. No other criteria may be considered in adjusting the fixed - fee. The Distributor may propose an increase in the flat fixed – fee if the following conditions exist: On the first Monday in November, if the price of fuel exceeds thirty (30) percent of the base fuel price, as established on the date of the initial proposal opening according to the Weekly on Highway Diesel Prices for the Lower Atlantic Region issued by the Energy Information Agency at:  
<http://tonto.eia.doe.gov/oog/info/wohdp/diesel.asp>

20.1.2 If conditions exceed 30% of the base fuel price, Distributor may submit a written request for a mid-contract adjustment to the fixed - fee; the request must be submitted to the School District within forty – five (45) days of February 1. The request must include justification and market documentation for the increase based on fuel cost.

- 20.1.3 To propose an increase in the fixed - fee, the Distributor shall: (1) Determine if the base fuel cost (as reflected at the proposal opening) has increased by thirty (30) percent, and if so, (2) Document the increase in the price per gallon over the initial base fuel cost.
- 20.1.4 The increase in the fixed - fee shall be based on \$ .01 per each \$ .20 increase in the cost of fuel per gallon. For example, if the base fee established at proposal opening is \$2.30 and fuel prices increased by forty – five (45) percent to \$3.33 per gallon on November 1, the \$ .01 may be applied per unit as indicated in the Distributor’s original proposal.
- 20.1.5 The increase in the flat fixed – fee, based on fuel prices, may not exceed \$ .03 per unit in a contract period. The increase in the fixed - fee adjustment at mid-Contract will take effect on Feb. 1 of the contract year.
- 20.1.6 The same conditions for adjusting the fixed - fee shall apply to the Renewal of the Contract. If, on the first Monday in May, the cost of fuel exceeds thirty (30) percent of the base price that was established November 1, the Distributor may propose an increase in the fixed - fee, using the same procedure described in Item 2 of this Section. The adjustment to the fixed - fee shall not exceed \$ .03 per unit. If, however, the price of fuel has dropped by thirty (30) percent from the base that was established on November 1, the Distributor shall reduce the fixed - fee accordingly.

## **21.0 PRODUCT USAGE REPORTS**

- 21.1.1 The Distributor awarded the Contract shall provide UPON REQUEST product electronic utilization reports to the School Nutrition Director, or designee, within 4 days of the request. These reports shall be submitted for total quantity delivered per line item (including substitutes for a proposal line item) in the terms of proposal units per school delivery point and/or combined district total.
- 21.1.2 Payments for the month prior to the due dates for the utilization reports may be withheld at the discretion of School District officials until utilization reports are received.

## **22.0 RECORDS RETENTION REQUIREMENTS**

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

## **23.0 ASSURANCE OF NON-COLLUSION**

By signing this RFP, the Distributor ASSURES that, to the best of his/her knowledge:

- 23.1.1. Neither the Distributor nor any business entity represented by the Distributor has received compensation for participation in the preparation of the items specifications or the General Terms and Conditions related to this RFP/Contract.
- 23.1.2 This RFP has been arrived at independently and is submitted without collusion with any other, with any competitor or potential competitor, or with any other person or entity to obtain any information or gain any special treatment or favoritism that would in any way limit competition or give an unfair advantage over any other Distributor with respect to this RFP/Contract.
- 23.1.3 The Distributor has not accepted, offered, conferred or agreed to confer, and will not in the future accept, offer, confer, or agree to confer any benefit or anything of value to any person or entity related to the School District or any of its members in connection with any information or submission related to this proposal, any recommendations, decisions, vote or award related to this proposal, or the exercise of any influence or discretion concerning the sale, delivery, or performance of any product or served related to this proposal,
- 23.1.4 Neither the Distributor, nor any business entity represented by the Distributor, 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 proposal, and this proposal has not been knowingly disclosed, and will not be knowingly disclosed to another Distributor, competitor, or potential competitor prior to the opening of proposals.
- 23.1.5 No attempt has been or will be made to induce any other person or entity to submit or to not submit a proposal.

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

- 24.1.1 By signing this RFP, the Distributor assures that: he/she has read and understands all the General Terms and Conditions in this document and agrees to be bound by them, and is authorized to submit proposals on behalf of the offering entity, the Distributor has noted any and all relationships that might be conflicts of interest and included such information with his/her response, the proposal submitted conforms to all item specification, these General Terms and Conditions, and any other instructions, requirements, or schedules outlined or included in this RFP, if this proposal is accepted, in whole or in part, the offering entity will furnish any item(s) awarded to them under this RFP to the SCHOOL DISTRICT at the proposed price and in accordance with the item specifications and the terms and conditions contained in this RFP, 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 proposal.
- 24.1.2 The offering entity has a high degree of integrity and business ethics, and a satisfactory record of performances, and has not been notified by any local, state or federal agency with competent jurisdiction that its standing in any matters whatsoever would preclude it from participating in this proposal, it would in no other way whatsoever be disqualified to propose or receive any award or contract related to this proposal, and the Distributor will comply with any reasonable request from the SCHOOL DISTRICT to supply any information sufficient to substantiate the proposing entity's ability to meet these minimum standards, the offering entity has identified and disclosed in this written proposal and any and all known suspected matters that would disqualify it from participating in this proposal or receiving any award or contract related to this proposal, recognizing that the offeror's failure to identify and disclose any such matters constitutes its affirmation that no such matters exist, and that failure to disclose in this proposal any such matters which do exist is a material breach of contract which would void the submitted proposal or any resulting contracts, and subject the offeror to removal from all procurement lists and possible

criminal prosecution the offering entity has obtained, and will continue to maintain during the entire term of this contract, all permits, approvals or licenses necessary for lawful performance of its obligations under this contract, the prices, prompt payment discount terms, delivery terms, distribution allowances, and the quality and/or performance of the products offered in the proposal will be competitive with those offered to a similarly situated customers in North Carolina.

- 24.1.3 The offering entity will comply with all laws relating to intellectual property, will not infringe on any third party's intellectual property rights, and will indemnify, defend and hold the SCHOOL DISTRICT and its members harmless against any claims for infringement of any copyrights, patents, or other infringements related to its activities under this contract. The offering entity will maintain, at the offering entity's expense, any insurance necessary to protect the SCHOOL DISTRICT and its members from all claims for bodily injury, death, or property damage that might arise from the performance by the offering entity or the offering entity's employees or its agents or any service required of the offering entity under this contract; however, the existence of such insurance will not relieve the offering entity of full responsibility and liability for damages, injury, death or loss as described or as otherwise provided for by law, neither the SCHOOL DISTRICT nor any of its members shall be liable to the offering entity for any damages (including, but not limited to, loss of profits or loss of business, or any special, consequential, exemplary, or incidental damages) in the event that the SCHOOL DISTRICT declares the offering entity in default, he/she understands that by signing the proposal with any false statement is a material breach of the contract which will void the submitted proposal or any resulting contract(s), and subject the Distributor to removal from all procurement lists, and possible criminal prosecution, Distributor s must comply with the State of North Carolina Conflict of Interest requirement as defined in General Statutes, Chapter 14-234.

## **25.0 REMEDIES FOR NON-PERFORMANCE OF CONTRACT, AND TERMINATION OF CONTRACT**

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

addressed and rectified in a timely manner, the School District reserves the right to enforce the performance of this contract in any manner prescribed by law, including termination of the contract as deemed to be in the best interest of the school district.

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

- the Distributor's failure to adhere to any of the provisions of the General Terms and Conditions of this RFP,
- the Distributor delivering any product(s) that fail to meet the Item Specifications included in this RFP relating to the awarded product(s),
- the Distributor delivering any substitution(s) of product(s) different than those originally proposed and awarded without the prior written approval of the SCHOOL DISTRICT,
- the Distributor's failure to provide timely, accurate billing and credits to the SCHOOL DISTRICT,
- the Distributor's failure to meet the required delivery schedules as identified in the contract documents, or
- the Distributor's violation of any other provision contained within these General Terms and Conditions or any attachment thereto which provides for contract termination as a remedy. Including, but not limited to, the purchase of other products of like type and quality from other sources in the open market. In the event the School District elects to purchase other products from other sources, the School District will invoice the for any increased costs to the School District and the Distributor agrees, by submission of a proposal response, to promptly pay any such charges invoiced.

In the event the School District terminates this Contract, in whole or in part, for any reason provided for within the contract, the School District reserves the right to award the canceled Contract, or any portion thereof, to the next lowest or most responsible offeror as it deems such award to be in the best interest of the SCHOOL DISTRICT.

Any Contract termination, or persistent documentation of breach of contract provisions, resulting from any cause other than a Force Majeure event will be deemed valid reason for not considering any future proposal from the defaulting Distributor. In the performance of this contract, time is of the essence and these General Terms and Conditions are of the essence.

**26.0 FORCE MAJEURE**

- 26.1.1 The party seeking relief due to Force Majeure will be required to promptly notify School Nutrition Director, citing the details of the Force Majeure event, including adequate market documentation, and request approval of the Force Majeure. If approved, the Distributor will be notified via e-mail from the SCHOOL DISTRICT.
- 26.1.2 The term Force Majeure shall include, but is not limited to, governmental restraints or decrees, provided they affect all companies in the Distributor's industry equally and are not actions taken solely against the Awarded Distributor, acts of God (except natural phenomena, such as rain, wind or flood, which are normally expected in the locale in which performance is to take place); work stoppages due to labor disputes or strikes; fires; explosions; epidemics; riots; war; rebellion; or sabotage.
- 26.1.3 The parties to this Contract will be required to use due caution and preventative measures to protect against the effects of Force Majeure, and the burden of proving that Force Majeure has occurred shall rest on the party seeking relief under this section. They will be required to use due diligence to overcome obstacles to performance created by the Force Majeure event, and shall resume performance immediately after the obstacles have been removed, provided the Contract has not been terminated in the interim.
- 26.1.4 Delay or failure of performance, by either party to this contract, caused solely by the Force Majeure event shall be executed for the period of delay caused solely by the Force



Majeure event, provided the affected party has promptly notified the other party in writing. Neither party shall have any claim for damages against the other resulting from delays caused solely by Force Majeure.

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

26.1.6 Notwithstanding any other provision of this section, in the event the Distributor's performance of its obligations under this contract is delayed or stopped by a Force Majeure event, the SCHOOL DISTRICT shall have the option to terminate this contract in accordance with the General Terms and Conditions document entitled "Remedies for Non-Performance of Contract, and Contract Termination." Furthermore, this section shall not be interpreted as to limit or otherwise modify any of the SCHOOL DISTRICT's rights as provided elsewhere in this contract.

## **27.0 WAIVER**

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

## **28.0 RIGHT TO ASSURANCE**

Whenever one party to this contract in good faith has reason to question the other party's intent to perform, the questioning party may demand that the other party give a written assurance of his intent to perform. In the event 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.

## **29.0 REGULATORY COMPLIANCE**

29.1.1 The Distributor and SCHOOL DISTRICT mutually agree to comply with all applicable standards, orders or requirements issued pursuant to Section 306 of the Clean Air Act (42 USC 1857 [h]), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 117389 and Environmental Protection Agency regulations (40 CFR Part 15). Any violations thereof shall be reported to the Administrator for Enforcement or other appropriate authority. Each party shall not be responsible to the other for acts beyond its control or acts caused by the negligence of the other party.

29.1.2 The Distributor agrees to comply with all mandatory standards and policies relating to energy efficiency as cited in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (P.L 165).

29.1.3 The Distributor shall comply with Executive Order 11246, entitled Equal Employment Opportunity, as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations, 41 CFR Part 60.

29.1.4 The Distributor shall comply with the following civil rights laws as amended: Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title 7 CFR parts 15, 15a, and 15b; the Americans with Disabilities Act; and FNS Instruction 113-6, "Civil Rights Compliance and Enforcement in School Nutrition Programs".

29.1.5 The Distributor shall comply with the "Buy American" provision for Contracts that involve the purchase of food and/or beverages as per 7 CFR Part 250.

- 29.1.6 The Distributor shall comply with the provisions of the Consumer Product Safety Act.
- 29.1.7 The Distributor shall provide notification of **HUB Certification. ATTACHMENT G**
- 29.1.8 The Distributor shall complete and sign the **Certification of Contracts, Grants, Loans, Cooperative Agreements and Lobbying ATTACHMENT H** and shall include this document as part of the Agreement.
- 29.1.9 The Distributor shall provide notification of **Debarment, Suspension and Other Responsibility Matters – Primary Covered Transactions ATTACHMENT I**
- 29.1.10 The Distributor shall abide by all APPLICABLE State and Federal laws and policies of the Board of Education when providing services under this Contract
- 29.1.11 The North Carolina Department of State Treasurer is providing this letter to Local Government Units to explain new contracting and procurement compliance obligations created by the Iran Divestment Act of 2015 (N.C.G.S. 143C-6A-1 to 6A-9).<sup>\*</sup> Local Government Units should be aware that effective February 26, 2016, this law imposes new obligations on each new bid process, each new contract, and each renewal or assignment of an existing contract.
- ATTACHMENT J** The specific requirements are as follows:
- **Local Government Units must obtain a one-page mandatory certification under the Act.** (See sample “Contract Certification” form for details.)
  - **Local Government Units may not enter into contracts with any entity or individual found on the State Treasurer’s Iran Final Divestment List.** This list will be posted on the Department of State Treasurer’s website on February 26, 2016 and will be updated every 180 days. (See “Contract Restrictions” for details.)

**ATTACHMENT A – IF APPLICABLE**

**FARMER AND/OR PACKER INFORMATION**

Provide a list of farmers or packers of all products. Provide information about product quality, packaging and case size.

**ATTACHMENT B – IF APPLICABLE**

**HACCP SUMMARY**

**Provide a current HACCP (Hazard Analysis Critical Control Point) summary describing company food safety practices.**

## **ATTACHMENT C**

### **EVIDENCE OF INSURANCE**

Attach copy, or evidence, of required Property, Liability and Worker's Compensation Insurance.

Distributor Insurance documents are mailed to the **School District Contact Listed** in this document.

**ATTACHMENT D**

**NC LUNSFORD ACT N.C. General Statute 14-208.18**

**LUNSFORD ACT:** The 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 Distributor 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 company 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. 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. (Name of SFA) reserves the right to prohibit any individual employee of from providing services on (name of SFA) property or at Name of SFA) events if (Name of SFA) determines, in its sole discretion, that such employee poses a threat to the safety or well-being of students, school personnel or others.

_____	_____
<b>Company Name (Type)</b>	<b>Signature of Authorized Representative</b>
_____	_____
_____	<b>Print Authorized Representative Name</b>
_____	_____
_____	<b>Date</b>

**ATTACHMENT E – IF APPLICABLE**

**DISTRIBUTOR’S FOOD RECALL POLICY/PROCEDURES**

The U.S. food service industry is the safest in the world, but issues surface from time – to – time requiring fast and effective communication to recall a product that has been deemed unsafe. Provide a summary, or attach a document, explaining your company policy on addressing Food –Recalls.

_____	_____
<b>Company Name (Type)</b>	<b>Signature of Authorized Representative</b>
_____	_____
_____	<b>Print Authorized Representative Name</b>
_____	_____
_____	<b>Date</b>

**ATTACHMENT F – IF APPLICABLE**

**PRODUCE – GAP CERTIFICATION**

Growers providing produce to packers and serving school districts under an award of this RFP must have a verified and audited GAP program in place to make sure their produce is free of contamination. The goal of this program is to increase the number of farmers following Good Agricultural Practices (GAP)/ Good Handling Practices (GHP) and using third party audits to verify their food safety program. A list of GAP certified growers, listed by state, is available at the following website:

<https://apps.ams.usda.gov/GAPGHP/reportG05.aspx>

**Signature indicates agreement to provide U.S. produce from GAP certified growers.**

_____	_____
<b>Company Name (Type)</b>	<b>Signature of Authorized Representative</b>
_____	_____
_____	<b>Print Authorized Representative Name</b>
_____	_____
_____	<b>Date</b>



## ATTACHMENT G

### HUB CERTIFICATION

Historically Underutilized Business (HUB) Certification

Companies submitting Bids/Proposals 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 this RFP.

Mark YES or No with an "X" as applicable and sign below.

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

Check all that apply:

- Minority
- Small Business
- Women Owned

**No**, I certify that my company is does not qualify for HUB status.

_____	_____
<b>Company Name (Type)</b>	<b>Signature of Authorized Representative</b>
_____	_____
_____	<b>Print Authorized Representative Name</b>
_____	_____
_____	<b>Date</b>

**ATTACHMENT H**

**CERTIFICATION OF CONTRACTS, GRANTS, LOANS, COOPERATIVE LOBBYING AND COOPERATIVE AGREEMENTS**

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 Federal 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 in connection with 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.

_____	_____
<b>Company Name (Type)</b>	<b>Signature of Authorized Representative</b>
_____	_____
_____	<b>Print Authorized Representative Name</b>
_____	_____
_____	<b>Date</b>

**ATTACHMENT I**

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

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 bid been convicted of or had a civil judgment 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/bid 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 bid.

<b>Company Name (Type)</b>	<b>Signature of Authorized Representative</b>
	<b>Print Authorized Representative Name</b>
	<b>Date</b>

**Instructions for Certification**

1. By signing and submitting this form, the prospective lower tier participant is providing the certification set out in this document in accordance with these instructions.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this bid is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary" covered transaction," "principal," "bid," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this bid is submitted for assistance in obtaining copy of the regulations.
5. The prospective lower tier 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 with which this transaction originated.

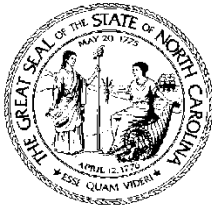
6. The prospective lower tier participant further agrees by submitting this form that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it 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.

8. 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.

9. Except for transactions authorized under paragraph 5 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 with which this transaction originated may pursue available remedies, including suspension and/or debarment.



NORTH CAROLINA  
DEPARTMENT OF STATE TREASURER  
CAL GOVERNMENT FINANCE DIVISION AND THE LOCAL GOVERNMENT COMMISSION

JANET COWELL  
TREASURER

GASKINS  
TREASURER

GREGORY C.  
DEPUTY

**Memorandum # 2016-10**

TO: All Local Governments, Public Authorities and Their Independent Auditors FROM: Sharon Edmundson, Director, Fiscal Management Section

SUBJECT: Iran Divestment Act Notice for Local Governments in North Carolina

DATE: February 17, 2016

The North Carolina Department of State Treasurer is providing this letter to Local Government Units to explain new contracting and procurement compliance obligations created by the [Iran Divestment Act of 2015](#) (N.C.G.S. 143C-6A-1 to 6A-9).<sup>\*</sup> Local Government Units should be aware that effective February 26, 2016, this law imposes new obligations on each new bid process, each new contract, and each renewal or assignment of an existing contract. The specific requirements are as follows:

1. **Local Government Units must obtain a one-page mandatory certification under the Act.** (See *sample "Contract Certification" form below for details.*)
2. **Local Government Units may not enter into contracts with any entity or individual found on the State Treasurer's Iran Final Divestment List.** This list will be posted on the Department of State Treasurer's website on February 26, 2016 and will be updated every 180 days. (See *"Contract Restrictions" below for details.*)

**Background**

The Iran Divestment Act's requirements applicable to Local Government Units<sup>\*\*</sup> will become effective on February 26, 2016, at the time the State Treasurer publishes the first list of prohibited companies and individuals (a "[Final Divestment List](#)") under the Act.

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\* The Iran Divestment Act of 2015 can be found online at:  
<http://www.ncleg.net/Sessions/2015/Bills/Senate/PDF/S455v5.pdf>

\*\* The Act's requirements use the term "State agency." G.S. 143C-6A-3(7) provides that in the act, the term "State agency" includes not only State departments, boards, and commissions, but also "any political subdivision of the State" such as a Local Government Unit.

**Final Divestment List**

The Department of State Treasurer develops the Final Divestment List using data from a research vendor, U.S. federal sanctions lists, and other credible information available to the public. It consists of any individual or company, including parent entities and majority owned subsidiaries, that::

- Provided goods or services of \$20,000,000 or more within any 12-month period in the energy sector of Iran during the preceding five years.
- Extended \$20,000,000 or more in credit, under certain circumstances, to another individual or company that will use the credit to provide goods or services in the energy sector in Iran. (G.S. 143C-6A-3(4).)

The Department of State Treasurer will update the Final Divestment List at least every 180 days. The list will be published on the State Treasurer's website at [www.nctreasurer.com/iran](http://www.nctreasurer.com/iran) and periodically circulated to Local Government Units.

**Requirement 1: Contract Certification**

For new procurements and new, renewed, or assigned contracts on or after February 26, 2016, each Local Government Unit must obtain a simple certification from each bidder or vendor. The bidder or vendor must affirm that it is not listed on the State Treasurer's Final Divestment List found at [www.nctreasurer.com/Iran](http://www.nctreasurer.com/Iran) as of the date of signature. The certification is due at the time a bid is submitted or the time a contract is entered into, renewed, or assigned. (G.S. 143C-6A- 5(a).)

We have attached on the next page a short form that can be used for this certification, but Local Government Units are free to instead use their own form or put the required certification in the text of a contract or purchase order. Each Local Government Unit shall maintain its own records demonstrating these certifications.

**Requirement 2: Restriction on Contracting**

Individuals or companies on the Final Divestment List are ineligible to contract or subcontract with Local Government Units. (G.S. 143C-6A-6(a).) Any existing contracts with these Iran-linked persons will be allowed to expire in accordance with the contract's terms. (G.S. 143C-6A-6(c).)

Contracts valued at less than \$1,000.00 are exempt from this restriction. (G.S. 143C-6A-7(a).) In addition, a Local Government Unit may contract with a listed individual or company if it makes a good-faith determination that (1) the commodities or services are necessary to perform its functions and (2) that, absent such an exemption, it would be unable to obtain those commodities or services. (G.S. 143C-6A-7(c).) Local Government Units shall enter such exemptions into the procurement record.

The Act provides that vendors to Local Government Units may not utilize any subcontractor found on the State Treasurer's Final Divestment List. (N.C.G.S. 143C-6A-5(b).) It is each vendor's responsibility to monitor its compliance with this restriction.

**Next Steps**

The Department of State Treasurer anticipates distributing the first Final Divestment List on February 26, 2016. Once the List has been distributed, all Local Government Units should meet the contract certification requirements.

If you have questions about the Department of State Treasurer's Iran Divestment Policy, please contact Dale Falwell at [dale.falwell@nctreasurer.com](mailto:dale.falwell@nctreasurer.com) or 919-814-4289.

**Name of Vendor or Bidder:**

\_\_\_\_\_

**IRAN DIVESTMENT ACT CERTIFICATION REQUIRED BY N.C.G.S. 143C-6A-5(a)**

As of the date listed below, the vendor or bidder listed above is not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. 143-6A-4.

The undersigned hereby certifies that he or she is authorized by the vendor or bidder listed above to make the foregoing statement.

\_\_\_\_\_

**Signature Vendor Required**

**Date**

\_\_\_\_\_

**Printed Name**

**Title**

*Notes to persons signing this form:*

N.C.G.S. 143C-6A-5(a) requires this 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 at the following times:

- When a bid is submitted
- When a contract is entered into (if the certification was not already made when the vendor made its bid)
- When a contract is renewed or assigned

N.C.G.S. 143C-6A-5(b) requires that 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.