

**Western Co-op
CHILD NUTRITION SERVICES**

INVITATION FOR BID (IFB)

Date IFB Issued: May 21, 2010

Description: This IFB is issued with the intent of entering into a Contract to procure perishable and non-perishable foods and food processing supplies for the Federally-funded Child Nutrition programs in the Western Co-Op of North Carolina.

The Western Co-op Includes Buncombe, Caldwell, Haywood, Henderson, Lincoln and Wilkes counties schools located in the western regions of North Carolina.

Date Bid Opens: June 18, 2010

Time Bid Opens: 2:00 PM

Deliver Bids to: Christina E. Dodd, MPA, RD, LND
Henderson County Public Schools
414 Fourth Avenue West
Hendersonville, NC 28739

Instructions: Deliver one of the complete Bid, all with original signatures, in a sealed envelope labeled as follows:

**Western Co-Op Food Bid
Opening on June 18, 2010 at 2:00 PM
Name and Title of person authorized to sign the Bid documents**

The complete Bid must include the original IFB/Contract, the Vendor's complete Bid Specification Spreadsheet(s), Attachments A – J, any Special Conditions, and any Memoranda that may be issued after the issuance of this IFB.

The Vendor is responsible to deliver the sealed Bid in a sealed envelope to the correct location and before 2:00 p.m. as evidenced by a bid sign in sheet at the time of opening or if the bid is received by mail, the bid will be time and dated stamped when received at the Henderson County Public Schools' Central Office.

Notice to Bidders: Subject to the conditions, provisions and the specifications associated with this IFB, sealed Bids will be received at this location until the stated date and time and then publicly opened. No consideration of Bid award will be made at the Bid opening. Bids received after this date and time, will not be accepted. The Western Co-Op reserves the right to retain all Bids for a period of sixty (60) days and to reject any and all Bids and to waive any informalities and/or irregularities thereof.

Contract Period: July 1, 2010 to June 30, 2010, Roll over clause is included in Section 18.0.

Type of Contract: Bottomline Firm Price -- Each proposal must include a bid on 90% of the items listed in each category. The categories are: 1) Meats and Frozen Foods, 2) Canned/Dried/Staples, 3) Spices, 4) Supplies, and 5) Chemicals. Escalation and/or de-escalating of prices will be permitted on February 1 of that school year, following the conditions outlined in this bid document in Contract Section 17.0. Written notification of price changes with documentation for the reason for change must be given to the Chairperson of the Western Co-op, Sandy Brooks,

ten (10) days prior to the date of change. Price changes will be only for increases in manufacturer prices to the distributor.

Line Items – 6) Juice and 7) Water will be awarded line item by each individual school district. Escalation and/or de-escalating of prices will be permitted on February 1 of that school year, following the conditions outlined in this bid document in Contract Section 17.0. Written notification of price changes with documentation for the reason for change must be given to the Chairperson of the Western Co-op, Sandy Brooks, ten (10) days prior to the date of change. Price changes will be only for increases in manufacturer prices to the distributor

DISCUSSIONS/NEGOTIATIONS

By submission of a Bid, the Vendor agrees that during the period following issuance of the Bid and prior to notification of intent and/or award of the Contract, the Vendor will not discuss this procurement with any party except the Western Co-Op representative, Christina Dodd. The Western Co-op reserves the right to reject any and all Bids and to cancel this solicitation if it is in the best interest of the districts or the Co-Op. Neither the School District nor the Western Co-Op shall be held responsible for any expenses incurred in the preparation or subsequent presentation of the Vendor's response to this solicitation.

The Western Co-Op reserves the right, at any time after opening and prior to award, to request from any Vendor clarification, address technical questions, or to seek or provide other information regarding the Vendor's Bid. This process may be used for such purposes as providing an opportunity for the Vendor to clarify the Bid in order to assure mutual understanding and/or aid in determinations of responsiveness or responsibility of the Vendor.

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 Christina Dodd with the Henderson County Public Schools, in writing, at cdodd@henderson.k12.nc.us, so as to be received five (5) working days after the date the IFB is issued by the Western Co-Op. The solicitation may or may not be changed but a review of such notification will be made prior to the award of a Contract.

INQUIRIES ABOUT THE IFB

Any inquiries, disputes or requests concerning interpretation or additional clarification or additional information pertaining to the IFB must be made in writing and received by Christina Dodd at cdodd@henderson.k12.nc.us on behalf of the Western Co-Op, no later than five (5) working days prior to the Bid opening date. A written response will be issued; a written addendum is the only official method whereby interpretation, clarification and additional information can be given. Once issued, all addenda shall become part of this IFB. All addenda will be issued electronically to each Vendor known by the Western Co-Op to have received the initial IFB. However, before submitting a Bid, it shall be the responsibility of each Vendor to contact Christina Dodd, at cdodd@henderson.k12.nc.us prior to the Bid opening to determine whether additional addenda were issued.

ACCEPTANCE OF BID AND AWARD OF CONTRACT

If any or all parts of the Vendor's Bid are accepted by the Western Co-Op, an authorized representative of the Western Co-Op shall affix their signature hereto and collectively this IFB and the Vendor's Bid shall become the Contract and shall represent the entire agreement between the School District and the Vendor. The sections outlined in the General Terms and Conditions of the IFB/Contract are for convenience and reference only, and in no way define, describe, extend, or limit the scope or intent of the provisions of any section of this document.

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

1. The IFB, including Product Specifications (paper and electronic copies) and any subsequent additions to the Product Specifications by the Western Co-Op;
2. Any and all Addenda or special written provisions specified by the Western Co-Op;

3. The Vendor's Bid Certification, which must be completed, signed by an authorized representative of the Vendor, and returned with the Vendor's response, along with this ENTIRE document and all Attachments included with this IFB; and the
4. Notice of Award document from the Western Co-Op to the selected Vendor and put into effect by the issuance of a Purchase Order(s) signed by an authorized representative of the Western Co-Op after the Contract is awarded.

Note: Addendums added by vendors will not be allowed.

FEDERAL PROGRAM REGULATIONS

The Child Nutrition Programs receiving goods and services under this Contract are Federally-funded programs operated under the authority of the United States Department of Agriculture (USDA). This IFB and the subsequent Contract shall 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 IFB, and subject to all conditions required herein, the undersigned offers and 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 IFB, the Vendor certifies that the Bid is made without prior understanding, agreement, or connection with any firm, corporation, or person submitting a Bid 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 IFB. Under penalty of perjury, the undersigned Vendor certifies that this Bid has not been arrived at collusively or otherwise in violation of Federal or State (North Carolina) laws or regulations.

By signing this Bid Certification, the individual whose name is shown below assures that the Vendor has read and understands all the General Terms and Conditions in this document and agrees to be bound by them, and is authorized to submit Bids on behalf of the Vendor. The Bid submitted by the Vendor conforms to all specifications, the General Terms and Conditions, and any other instructions, requirements, or schedules outlined or included in this IFB/Contract.

Print Name of Person Authorized to Sign Bid

Signature of Person Authorized to Sign Bid

Print Name of Vendor/Company/Organization

Date

SPECIFICS FOR WESTERN CO-OP

To Whom It May Concern:

Buncombe County Schools, Caldwell County Schools, Haywood County Schools, Henderson County Schools, Lincoln County Schools and Wilkes County Schools Child Nutrition Programs are mutually requesting bids on the enclosed form, which lists foods, juice, water, supplies, and chemicals needed for a one-year period beginning July 1, 2010 ending June 30, 2011.

1. Escalation and/or de-escalation of prices will be permitted on February 1 with written notification to the Chairperson of the Co-op, 15 days prior to the date of change. If prices change then documentation must be provided that proves reason for the change. Price changes will be only for increases in manufacturer prices to the distributor.

2. Each school system reserves the right to request prices for new items that they might like to try during the school year.

3. The enclosed bid form shows the estimated quantities needed for a period of one school year. It will be understood that any awards established as a result of this invitation to bid will not obligate the school systems to receive any quantity in excess of actual requirements. It is anticipated that the quantities shown will not vary more than 15% more or less. All bids should include all costs pertaining to transportation and delivery.

4. If the company request that an employee stay after 2:00 p.m. to receive delivery and overtime is incurred, said company will be required to pay employee 1 ½ times their normal salary. If an employee cannot remain at the delivery site after 2:00 p. m., the company will have to make other arrangements to deliver the items before lunch the next day.

5. Brand names and company identification numbers should be indicated. Company labels must accurately reflect the quality specified. Should pack size of cases differ from information stated, those differences should be noted. Most bid items will require more specific information from each vendor before the lowest bid can be determined. Any items listed which do not have complete information, such as counts or packs will not be considered for award. It is understood that all bid prices must be firm throughout the entire bid period, and that any exceptions to the terms or conditions must be shown in writing and attached to the bid form upon return.

6. The company that is awarded the bid must provide product nutrient information sheet for all meat and frozen food items as well as other select items as requested by the individual school systems. The information sheets should be provided within 30 days of the award of the bid.

7. A roll over of up to four years will be considered at the end of each school year. All six districts must be agreeable with this before it will be considered. Prices will be requested and service will be considered before determination will be made. Bid prices will be expected for all items added from the previous year. All terms of the bid will be applicable for the new year contract unless terms are in writing and signed by all four School District Directors in charge of overlooking bid procedures. If prices change then documentation must be provided that proves reason for the change. Price changes will be only for increases in manufacturer prices to the distributor.

8. The timetable for this bid is as follows:

Friday, May 21, 2010 -- Bid packets mailed to companies

Friday, June 18, 2010 -- Bid form required by 2:00 p.m.

Friday, June 25, 2010 -- Notification of Bid Awards

Second week of July – Accepting food deliveries for summer programs and year round schools

Procedures for award of this bid are as follows:

- 1) For a bid to be acceptable, the company must have readily available and place a bid price on 90 percent of the items listed in each category. The categories are:
 - a) Meats and Frozen
 - b) Canned/Dried/Stapes

- c) Spices
- d) Supplies
- e) Chemicals,
- f) Juice and water.

*All items with an estimated usage of 500 or more must be included in the 90 percent.

- 2) If a company does not enter a bid price on an item, that item is not considered in arriving at the grand total for any company.
- 3) Award of this contract shall be to the lowest, most responsive and responsible bidder based on the method of award listed.
- 4) All food items must be of current year's pack and containers in good condition, with a shelf life of at least six months. Food in damaged containers will not be accepted. Frozen foods must be received hard frozen, 0 degrees F. or below and must not have been allowed to thaw and be refrozen.
- 5) With the exception of such foods as olives, tuna, mandarin oranges, pineapple, frozen Mexican strawberries, and various other foodstuffs. Preference may be given to foods domestically produced rather than imported. All products must conform to the Federal Pure Food and Drug Law. The vendor shall bear all expenses associated with this compliance.
- 6) All frozen foods, staples and supplies shall be delivered once a week for each school system. Any items not delivered will be subject to be delivered the following day, if the menu permits. Substitutions are not to be made without the consent of each Director or designee involved before delivery.
- 7) USDA requires certification regarding debarment, suspension, ineligibility and voluntary exclusion for any organization that provides goods and services for any federal agency or user of funds in the amount of \$25,000 or more. Please complete the attached document of certification and return with the proposal for food and supplies.

The Buncombe County, Caldwell County, Haywood County and Henderson County Boards of Education individually reserve the right to accept or reject any or all bids. Thank you for your interest.

Sealed bids in envelopes marked "WESTERN CO-OP PROPOSAL with the COMPANY NAME, DATE, and TIME OF OPENING must be received by Friday, June 18, 2010 at 2:00 p.m. either by mail or in person to:

Christina Dodd, Director
Child Nutrition Program
Henderson County Public Schools
414 Fourth Ave West
Hendersonville, NC 28739

**Western Co-Op
 VENDOR BID CERTIFICATION
 and to Include any Summer Nutrition Programs**

Bidder Failure to execute/sign Bid prior to submittal shall render Bid invalid.

ADDENDUMS ____ THRU ____ WERE RECEIVED PRIOR TO BID SUBMITTAL

VENDOR: _____

FEDERAL ID OR SOCIAL SECURITY NUMBER _____

ADDRESS: _____

CITY & STATE _____ ZIP: _____

TYPE OR PRINT NAME & TITLE OF PERSON SIGNING THIS BID AND PROVIDE E-MAIL:

NAME/TITLE: _____

E-MAIL _____

I certify by my signature below that the **PRICES** quoted in this IFB are correct and that I have the authority to obligate the company to perform under the terms and conditions stated in this IFB/Contract.

AUTHORIZED SIGNATURE: _____ DATE: _____

COMPANY _____

THE METHOD OF AWARD FOR LOTS 1 – 5 WILL BE BOTTOM LINE BY LOT

Lots 1 – 5: Meat and Frozen, Staples, Spices, Supplies and Chemicals

Bottom Line prices: \$ _____

THE METHOD OF AWARD FOR LOTS 6 - 8 WILL BE LINE ITEM BY Item

LOT 6: NON-VENDED WATER \$ _____

LOT 7: NON-VENDED JUICES \$ _____

I certify by my signature below that the PRICES quoted in this IFB are correct and that I have the authority to obligate the company to perform under the terms and conditions stated in this IFB/Contract.

Print Name of Person Authorized to Sign Bid

Signature of Person Authorized to Sign Bid

Print Name of Vendor/Company/Organization

Date

The School Districts reserves the right to exclude LOTS, other than LOT 1 - 5, and use alternate Bid documents/award methods.

GENERAL TERMS AND CONDITIONS

1.0 SCOPE AND PURPOSE

- 1.1 The Western Co-Op (Buncombe, Caldwell, Haywood, Henderson, Lincoln and Wilkes County Child Nutrition Programs herein referred to as the School District) is requesting to receive Bids from an OFFERING ENTITY, (herein after referred to as Vendor), defined as a company that is offering to order, warehouse and deliver food and supplies for use in the Western Co-op's Child Nutrition Programs. Each School District's Profile is provided which provides pertinent information about the district including the names, addresses and contact information for the each district's schools, current average daily breakfast and lunch meals served, average daily snacks served, and, where appropriate, average daily participation in the Summer Food Service Program or Seamless Summer Option. The profile also includes the each district's routine payment schedule.
- 1.2 Buncombe, Caldwell, Haywood, Henderson, Lincoln and Wilkes School District are all voluntary participants in the Western Co-op (herein referred to as the Western Co-op) and have the mission to procure high quality, reasonably priced products and services for Federally-funded Child Nutrition programs operating in North Carolina. The goals of the Western Co-op are to work together to consolidate Bid products which will provide benefits that are measurable, cost-effective, and ethically applied in all member School Districts. The estimates provided regarding the volume of purchases of the Western Co-op member districts are expected to enhance the purchasing power of this Contract.
- 1.3 Western Co-op membership does not constitute a legal affiliation; it serves as a means to consolidate Bid products for the mutual benefit of the member districts and Vendors in the procurement of high quality foods at the most reasonable cost.
- 1.4 Member districts will participate actively in the operation and decision-making of the Western Co-op.
- 1.5 This IFB and all attachments and addenda hereto will become the Contract between each School District and the successful Vendor.

2.0 VENDOR QUALIFICATION AND RESPONSIBILITY

- 2.1 The Vendor 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 in the IFB/Contract. Failure or omission of the Vendor to be familiar with existing conditions shall in no way relieve the company of obligation with respect to this Contract.
- 2.2 The Vendor awarded the Contract must have a minimum of one (1) year of experience in the food business and must maintain a current business license from the State of North Carolina. Vendors shall provide documentation of applicable license, certification, and or commercial experience upon request.
- 2.3 The Vendor awarded the Contract must, upon request of the School District, furnish satisfactory evidence of their ability to furnish products in accordance with the terms and conditions of the IFB. The School District reserves the right to make the final determination as to the Vendor's ability to provide the products requested herein.
- 2.4 The Vendor awarded the Contract is expected to constantly search for items that offer a better value; promote the introduction of new items; respond promptly to problems with products, delivery, or transaction documentation; provide timely cost and usage reports, and perform all Contractual requirements in a manner consistent with the terms and conditions of the Contract.
- 2.5 The Vendor awarded the Contract will be required to interface with the manufacturers about problems relating to product quality to the satisfaction of the School Districts.
- 2.6 The Vendor awarded the Contract shall be expected to voluntarily comply with all Federal, State and local mandates regarding the identification and recall of foods from the commercial and consumer marketplace. The Vendor shall have a process in place to effectively respond to a food recall; the process must include accurate and timely communications to the School District and the Western Co-op and assurance that unsafe products are identified and removed from school sites in an expedient,

effective and efficient manner. A one-page summary of the Vendor's recall policy and procedures is required to be submitted with the Bid in **Attachment C**.

- 2.7 Member districts of the Western Co-op reserve the right to request documentation, conduct on-site inspections of the Vendor's facilities, delivery vehicles and records, pertaining to the Western Co-op at any time during the Contract period. The warehouse and delivery vehicles shall be clean, be free of insects and rodents, and be adequate for storing and delivering products (dry, chilled, and frozen). The Vendor awarded the Contract must have an on-site HACCP Plan and attach a summary of the plan with this Bid in **Attachment D**.
- 2.8 The Vendor awarded the Contract shall maintain all necessary insurance for the period during which purchases are made, including Comprehensive General Liability Insurance, Property Damage Insurance, Workers Compensation Insurance, and Automobile Liability Insurance. The Vendor shall provide evidence in **Attachment E** that it currently has, and agrees to purchase and maintain, during its performance under this Contract, the following insurance from one or more insurance companies authorized to do business in the State of North Carolina:
1. The Vendor shall maintain bodily injury and property damage liability insurance covering all owned, non-owned and hired vehicles. The policy limits of such insurance shall not be less than \$1,000,000 combined single limit each person/each occurrence.
 2. Commercial General Liability – Vendor shall maintain Commercial General Liability insurance that shall protect the Vendor from claims of bodily injury or property damage which arise from performance under this Contract. This insurance shall include coverage for Contractual liability. The policy limits of such insurance shall not be less than \$1,000,000 combined single limit each occurrence/annual aggregate.
 3. The Vendor shall meet the statutory requirements of the State of North Carolina for worker's compensation coverage and employer's liability insurance.

Should any required insurance be cancelled before the expiration, the issuing company will mail thirty (30) days written notice to the Western Co-op and the School District.

- 2.9 The Vendor'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 of the School District facilities.
- 2.10 The Vendor's personnel are forbidden to consume alcohol, use tobacco, or possess firearms on school property at any time.
- 2.11 The employment of unauthorized aliens by the Vendor is considered a violation of Section 247A (e) of the Immigration Reform and Control Act of 1986. If the Vendor knowingly employs unauthorized aliens, such a violation shall also be cause for cancellation of the Contract.
- 2.12 Vendors are required to conduct an annual check of the State Sex Offender Registry and Public Protection Program and the State Sexually Violent Predator Registration Program on all personnel who may be sent to perform tasks on or deliver products to school property. Persons who are subject to this registry may not be sent on to school property for any reason. The Vendor must submit the procedure for complying with this requirement in **Attachment J**.
- 2.13 Vendors will provide each individual school district with a local (local being define as an individual that is assigned a sales territory within 25 miles of the school district's central office location) sales representative as a contact for dealing with delivery issues, school closing, shortages, introducing new items, and other issues as needed by each school districts individual needs and issues.

3.0 Proposal Requirements

- 3.1 The Western Counties Co-Op will receive sealed, written proposals at the time and place specified on the Request for Proposal. Neither dating of proposal form nor placing in mail by this date will meet requirements. Proposal must be received on/or before date and time stated. The Co-Op reserves the right to reject any and all proposals and to waive any and all informalities.
- 3.2 Correction of Mistakes: All quotations must be in ink or typewritten. No erasures are permitted. Mistakes may be crossed out and correction inserted adjacently. Person signing quotation must initial corrections in ink.
- 3.3 Return Instructions:
1. Attachment A form must be used without alterations.
 2. All Contract Section and attachments shall be in a sealed envelope, with the address of the school district, company name, proposal number, and opening date on the outside of the envelope, as they appear on the Request.
 3. Addendum: No addendum will be issued later than five (5) working days prior to proposal opening.

4.0 FACTORS FOR REVIEWS AND AWARD

- 4.1 Award of this contract shall be to the lowest, most responsive and responsible bidder based on the method of award listed for each LOT. Consideration of award shall be based on the information submitted by the Vendor as shown on the LOT line of the Bid Certification and verified by the School District.
- 4.2 **LOTS 1 – 5:** The award will be made by combined Lots 1- 5 to the qualified bidder with the lowest bottom line price as listed on the Lot Line of the Bid Certification and verified by the School District.
- 4.3 **LOTS 6-7:** The award will be made by **line item** to the qualified bidder with the lowest line item pricing on the Bid Specification Spreadsheet(s).
- 4.4 Prices stated must be in units specified in the Bid Specification Spreadsheet(s). In the event of a discrepancy between the unit price and extension, the unit price will be considered correct.
- 4.5 Efforts have been made to provide correct Vendor product codes and Vendor packs.
- 4.6 After the public opening of Request for Proposals, school district officials will require at least ten (10) working days for review.
- 4.7 The proposal will be checked for accuracy. All proposals shall/may be subject to verification. If errors on math and brands are within tolerance described in this contract, the bottom line (where applicable) will be adjusted, and if the proposal is still low, the proposal disclosure procedure will continue.
- 4.8 Mathematical Accuracy of Proposed Offered -- Ninety percent (90%) of the mathematical calculations shall be correct. The following items will be classified as mathematical calculations:
1. Any error in a line item in conversion, addition, or multiplication, which results in an incorrect calculation, will be counted as one (1) error.
 2. Any error in addition to arrive at the bottom line will be counted as follows: Each 1-% change in the bottom line will count as an error.
- 4.9 Brand Indication

1. Offering a proposal on a brand that was not pre-approved may be a reason for rejection of proposal/item. The volume of the item will be considered. If another brand is offered, state brand and manufacturer product number.
2. Failure to fill in brand proposed shall be considered grounds for rejection of proposal and or item. The bid proposer may be given the opportunity to provide this information if done within twenty-four (24) hours of request.

4.10 Charges for Consistent Inconvenience to the School District or Contractor

1. After acceptance, the successful contractor will be liable for any expenses, including attorney fees, incurred as a result of violations or attempts to enforce this contract.
2. If the contractor is consistently unable to deliver an approved product, the school district may purchase a product of equal or greater quality from another source. The difference between price paid and contract price may be charged to the contractor.

4.11. Decimals: Any mathematical calculation that involves decimals shall be treated as follows:

1. All decimals shall be carried only two (2) places.
2. Fractions shall not be rounded up or down.

5.0 SPECIAL CONDITIONS and ADDITIONAL PRODUCTS

5.1 Individual School District may add additional products, which are exclusive to the School District, to this IFB under the terms and conditions outlined in this IFB though out the term of the contact. Each school system reserves the right to request prices for new items that they might like to try during the school year.

6.0 PRODUCT REQUIREMENTS

6.1 All food products supplied by the Vendor awarded the Contract will comply with Standards of Identity, Quality and Fill as described in 21 CFR Part 100 of the Food, Drug and Cosmetic Act regulations.

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

6.3 **Approved Brands:** The "Approved Brand" space on the product lists indicates one of the following:

- A. **House Label with Product Identification** -- product identification is in itself sufficient, in the case of certain generic items such as pork chops. The words "house label" will appear in the approved brand column and the contractor may bid any label. The proposer should circle the words "house label" and write in the actual brand and code for product bid.
- B. **House Label W/Grade Designation** -- Approval has been given to any one of several brands that are listed herein on the chart of grade designations. The words "house label" will appear in the "approved brands" space. "House label" always refers to the brands shown in the chart of brands. For canned and frozen fruits and vegetables, the potential contractor shall write in the appropriate label including grade designation for example, Sysco Classic, All Kitchens Green, Howard House. The contractor shall provide a current chart of grade designations for their house labels, if different from or not included in this document.
- C. **Approved Brands** -- Items not covered by instructions 4-A or 4-B above will have manufacturer's name and product code number under "approved brands." Potential contractors may propose only those products that are pre-approved. This instruction most frequently

applies to meat items. In some instances where "house label" is normally bid, the potential contractor will choose to offer a quote on a national brand, in these instances the national brand must be pre-approved.

6.4 **Unacceptable Brands:** The School district may specifically designate any brand as unacceptable even if blanket approval is implied. Stating the "X" Brand is unacceptable does this.

6.5 **Brand "Quoting On":** A potential contractor shall circle the brand that a quote is offered on. See Contract Attachment A for "house label" items.

7.0 PRODUCT ESTIMATED QUANTITIES

7.1 Quantities reflected in this IFB are estimates based on the combined projected needs of the Western Co-op during the Contract period. These quantities are the best estimate of anticipated needs available at the time of publication of this IFB, but the accuracy of this estimate may be affected by numerous factors including but not limited to, budgetary adjustments, product pricing, availability of Federal funds or other subsidies, changing market forces, or unintentional errors or omissions. Actual needs may be greater or less than the estimated quantities provided.

7.2 *The Western Co-op membership combined product usage estimate provides Vendors a guide as to potential product usage of the member district combined, but under no circumstances guarantees product usage.*

8.0 BID AWARD, VENDOR OPTION TO DECLINE, NEGOTIATION, PIGGYBACK CLAUSE

8.1 The submittal of a Bid shall constitute an irrevocable offer to Contract with the Western Co-op. In accordance with the terms of the IFB/Contract, the offer may not be withdrawn until or unless rejected or not accepted by the School District.

8.2 The accuracy of all prices, fixed fees and statements contained in the Bid is the responsibility of the Vendor, and no change or cancellation may be made. The Western Co-op members reserves the right to ask the Vendor for clarification.

8.3 In the event the Western Co-op members made an error in a product specification, that item would be excluded from the tabulation. Any item excluded from the tabulation will be excluded for all bidders for evaluation purposes only.

8.4 The Vendor awarded the Contract has the option to decline award. If the Vendor is awarded the Contract, and chooses to decline the award, the Vendor is required to provide a written request of relief to the Western Co-op within three (3) days of the date of the final award.

8.5 The Western Co-op reserves the right to negotiate final terms and conditions with the Vendor with the lowest, most responsive and responsible Bid.

8.6 The Western Co-op reserves the right to reject any and all Bids, or parts thereof.

8.7 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 within the Western Co-op. The member district's BOE, having approved the waiver for competitive bidding, may enter into a new and separate contract with a vendor who has contracted with another member district provided the member district's BOE is in agreement and the vendor is willing to extend the same or more favorable prices, terms and conditions to the member district for which competitive bidding has been waived. (Piggy Back Clause)

9.0 BID ACCEPTANCE

9.1 The period for acceptance of this Bid will be seven (7) calendar days or until the approval the Local Board of Education, whichever comes first.

10.0 PROTEST PROCEDURE

10.1 Protests of awards exceeding \$25,000 in value must be submitted to the Western Co-op issuing of this IFB. Protests must be in writing and provide specific reasons with supporting documentation for the protest.

10.2 The protest must be received by the Child Nutrition Director in the each School District within ten (10) calendar days from the date the Contract is awarded.

11.0 WAREHOUSING

11.1 The Vendor awarded the Contract is responsible for the proper warehousing of all products prior to delivery to the School Districts. Products must be held at the proper temperatures and humidified as recommended by packers or manufacturers, so as to maintain the products and packages at optimum levels of quality and condition. The Vendor shall be liable for the safety and appearance of products and packaging materials. Any products or packages received that are out of condition, as per HACCP guidelines, or not hard frozen in the case of frozen products, will be returned for full credit.

11.0 TRANSMITTAL OF DELIVERY ORDERS

11.1 Orders will be submitted to the Vendor awarded the Contract by the individual School District on a weekly 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.

11.2 Orders may be transmitted electronically, by fax or directly to sales person as mutually agreed upon by the Vendor awarded the Contract and the individual School District. Order guides (preprinted) shall be furnished by the Vendor for recording and/or transmitting orders. If Internet-based, electronic ordering systems are used, the Vendor will provide training on use of the ordering system to necessary School District personnel. The Vendor must block non-bid items from electronic ordering systems available to the School District Regular orders shall be placed at least three- (3) workdays before delivery time requested. Any add on orders should be placed 24 hours before the order is delivered. Purchase order numbers should be listed on delivery tickets.

11.3 The Vendor awarded the Contract shall provide a representative to screen orders, discuss orders with the Child Nutrition Director, or designee, on a weekly basis; 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 as well as make arrangements when deliveries are delayed or cancelled due to school cancellations and inclement weather.

12.0 DELIVERIES

12.1 Twelve (12) months per year for counties with year round school and summer school programs and ten (10) months for all other school systems.

12.2 The frequency of delivery shall be weekly, provided that each delivery has a minimum of \$250.00 worth of goods.

12.3 Deliveries should be delivered and placed in appropriate facility between the hours of 7:00 a.m. and 1:30 p.m. Any deliveries after 2:00 p.m. will require payment of time and half to employees that agreed to remain on duty to receive the delivery. Payment should be made within one month.

12.4 Holiday deliveries -- (Holiday shall be defined as any week that has less than five (5) school days). If the holiday falls on a scheduled delivery day, the delivery shall be made on a day to be mutually agreed upon by the school district and the successful contractor.

12.5 Delivery schedules shall be submitted to school district officials for prior approval and shall remain constant from delivery to delivery.

- 12.6 Drivers and helpers shall deliver merchandise into designated storage areas (dry, chilled, and frozen). Drivers or helpers shall not be required to stow merchandise on shelves.
- 12.7 Drivers and helpers shall request the authorized site receiver, or the designated representative, to verify the accuracy of quantities of each item, brand and code numbers of each item, and condition of merchandise. A designated site receiver shall sign each delivery ticket. The designated site receiver shall note variations from the norm, i. e., shortages, damages, etc. The contractor shall not be required to issue credits for errors not detected at the time of delivery, except for hidden damage. Two (2) copies of delivery ticket must be left with receiver.
- 12.8 Special or intermediate deliveries shall be required only if a contractor fails to deliver a product on a regularly scheduled delivery.
- 12.9 Each 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 Vendor 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 an unacceptable contention will not be accepted.
- 12.10 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.

13.0 BILLING AND PAYMENT

- 13.1 Payments: All invoices for products received and inspected by the last working day of the month will be paid by the 26th of the next month. All invoices shall be sent to each school district in the Western Co-op and payment will be made by individual school system.
- 13.2 The Vendor awarded the Contract shall provide the School District separate invoices and statements for food and supplies. The School District will provide separate Purchase Orders for each group.
- 13.3 The Vendor awarded the Contract shall issue credit memorandums for returned/picked up items within ten (10) business days from the request to do so.
- 13.4 Failure to issue credit memorandums in a timely basis shall constitute grounds for withholding Vendor payments.
- 13.5 Food and certain non-food items purchased under this Contract by the School District are not subject to State and Federal Taxes. Taxable items shall be invoiced separately and shall be billed on a separate statement. The tax exemption certificate will be furnished upon request. Out-of-state Vendors shall comply with the tax laws of the State of North Carolina for food and non-food items.
- 13.6 Distributer must be able to do NOI using the computer with the manufacture that do NOI and that School systems prefer to participate with.

14.0 PRODUCT DATA SHEETS AND UTILIZATION REPORTS

- 14.1 The Vendor awarded the Contract shall provide product data sheets within five (5) working days after request. Product data sheets shall include, but will not be limited to ingredient, allergens, and other product information, nutrition information statements, pack sizes, instructions for preparation and serving, and other pertinent product information. Payments for the month prior to the due dates for receiving the product data sheets may be withheld at the discretion of School District officials until product data sheets are received.
- 14.2 The Vendor awarded the Contract shall provide utilization reports to the Child Nutrition Director, or designee, monthly or upon request. These reports shall be submitted for total quantity delivered per

item in terms of Bid units per school delivery point and a combined district total. Utilization reports shall be submitted within fifteen (15) calendar days after the end of a month. 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.

15.0 SUBSTITUTION REQUIREMENTS

- 15.1 The Vendor awarded the Contract shall order goods from manufacturers in economical quantities and maintain inventories at an ample level to prevent out of stock situations, while avoiding excessive inventories which might be counter productive to product conditions. Product substitutions due to out of stock situations should be held to an absolute minimum. Vendor "out of stock" percentage is expected at 3% of invoice orders or less. Excessive substitution may jeopardize future business from the Western Co-op or invoke Termination Proceedings
- 15.2 Substitutions may not be made without prior, written or verbal approval from the Child Nutrition Director or his/her designee. The Vendor's representative must contact the CN Director, or designee, no later than two (2) complete business days in advance, to request a substitution approval. Due to dietary and possible allergen issues, the exact specifications for the proposed substitute(s) must be e-mailed or faxed to the Child Nutrition Director, or designee, at the time of request for approval. Any substitution that is not approved, in advance, in writing or verbally by the Child Nutrition Director or her/his designee, will be rejected. Delivering brands that are not pre-approved may be reason for rejection of the product, termination of the contract, and shall be considered non-delivery of product.
- 15.3 For the sake of meeting delivery schedules, the Vendor may deliver any pre-approved brand at the same price, with a minimum of 24 hours notification and prior written/verbal approval of the Child Nutrition Director. Any other substitutions brought in by the Vendor to alleviate out of stock situations must be of the same or higher quality as the regular stock, and must be delivered at the same or lower portion cost than regular stock.
- 15.4 The fact that a substitute is being made shall be clearly stated on the invoice or provided on a separate invoice. Payment will not be made on unauthorized substitutions. If substitutions are made without the written authorization of the Child Nutrition Director (or designee) and an adverse action is experienced within the district, all costs associated with the adverse action within the School District will be assumed by the Vendor.
- 15.5 If a substitute product is not approved by the Child Nutrition Director, or designee, the School District shall, in good faith and in its sole discretion, purchase a product of equal or greater quality from another source. The Vendor shall be responsible and liable for the difference in the cost between the amount paid for the substituted product and the amount, which would have been paid, had the product been delivered. The Vendor shall have no basis to complain that the substituted product purchased could have been purchased at a lower price and the difference in cost (with documentation) will be subtracted from the amount due the Vendor.
- 15.5 To meet food safety and recall regulations, the Vendor will notify the Child Nutrition Director, or designee, and obtain written approval in advance whenever there is a change of Bid product sources, including when any non-domestic agricultural products are substituted for domestic agricultural products.

16.0 BUY AMERICAN PROVISION

- 16.1 The Vendor shall comply with the "Buy American" provision for Contracts that involve the purchase of agricultural products. Federal regulations require that all foods purchased for Child Nutrition Programs be of domestic origin to the maximum extent practicable. While rare, two (2) exceptions may exist: Exceptions to the Buy American provision are possible when (1) the product is not produced or manufactured in the U.S. in sufficient, reasonable and available quantities of a satisfactory quality; and (2) competitive Bids reveal the cost of a domestic product is significantly higher than a non-domestic product.

- 16.2 ALL non-domestic products bid as part of this IFB must be identified as such in the Bid document with the country of origin listed and a list of non-domestic products must be sent to Child Nutrition Director for prior written APPROVAL in advance of delivery. The Vendor must submit written documentation to substantiate any non-domestic item included in this Bid with the exception of the following products: pineapples, mandarin oranges, olives, tuna, bananas and coffee.
- 16.3 Any substitution of a non-domestic product for a domestic product (which was originally a part of the IFB), must be approved, in writing, by the Child Nutrition Director, prior to the delivery of the product to the School District.
- 16.4 Any non-domestic product delivered to the School District, without the prior, written approval of the Child Nutrition Director, will be rejected. Should non-domestic substitutes that were not pre-approved in writing, by the Child Nutrition Director be delivered to and rejected by the School District, the Vendor shall be held accountable for all over-claims that result from failure to meet the School District's required meal pattern.
- 16.5 Agricultural products which are canned or packed outside of the United States may be accepted with proof from manufacturer that poor Market conditions exist (weather, and/or supply availability of market); this requirement applies to "private labels" as well as other labels.

17.0 ECONOMIC PRICE ADJUSTMENT

- 17.1 Whenever a manufacturer, packer or supplier increases or decreases, rather than extends the cost of a product, the Vendor must solicit and document the cost from other approved sources (i.e. Recognized Market Reports, Consumer Price Index-Cost of Food Away from Home) in the same manner as for the initial Bid. The Vendor shall shop the market for "Best Buys" and maintain, and provide, upon request, documentation of such efforts on behalf of the Western Co-op and its member districts.
- 17.2 **Product price adjustment for** (Food, Snacks, Supplies) may be requested in writing fifteen days in advance of the effective date of **February 1** of the Contract year, and/or thirty days in advance of the effective date of the Contract renewal or roll over with appropriate product documentation to allow for Western Co-op approval or provide opportunity to make other provisions as deemed appropriate. Appropriate product documentation consists of manufacturer or supplier's invoice to Vendor (with applicable dates) showing cost increase along with a recognized marketing report verification. Annual Contract pricing increases will not take affect until the last delivery to any Summer Nutrition Programs provided by the School District.

18.0 BID ROLLOVER CLAUSE (OPTION TO EXTEND OR RENEW CONTRACT)

- 18.1 Unless this Contract is renewed or extended by mutual agreement of both parties beyond the expiration of the Contract time period as stated on the Bid Certification, this Contract shall terminate at the end of the term stated on the Bid Certification.
- 18.2 A roll over of up to four years will be considered at the end of each school year. All six districts must be agreeable with this before it will be considered. Prices will be requested and service will be considered before determination will be made. Bid prices will be expected for all items added from the previous year. All terms of the bid will be applicable for the new year contract unless terms are in writing and signed by all six School District Directors in charge of overlooking bid procedures.
- 18.3 The Western Co-op reserves the right to renew with the Vendor(s) for a period not to exceed four (4) additional terms of one (1) year each with mutual agreement of both parties about the following:
1. Product Price – including an economic adjustment for the renewal period (with appropriate manufacturer and market documentation) and
 2. Any increase in the fixed fee will be based on fuel cost only. Document of fuel cost will be required.
 3. Contract renewal prices and fixed fees shall take effect after the completion of any Summer Nutrition Programs operated by the School District.

- 18.4 In - Contract brand additions of a new product may occur at annual renewal as requested by the Western Co-op.
- 18.5 Fiscal Funding: If the effective dates of this proposal extend beyond July 31 of the current fiscal year, it shall be understood that purchases in the next fiscal year are conditional on the receipt of federal and/or state funds. In the event of the discontinuance or a decrease in federal and/or state funds the school district reserves the right to change the item identifications, decrease the quantities and/or delete items

19.0 RECORDS RETENTION REQUIREMENTS

- 19.1 By signing this Bid, the Vendor awarded the Contract 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.
- 19.2 Additionally, the Vendor awarded the Contract 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. Funds from the non-profit Child Nutrition Program may not be used for this purpose.
- 19.3 The Vendor awarded the Contract must retain all pertinent records identified by source, type, and category for a minimum of three (3) 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 issues raised by the audit.

20.0 ASSURANCE OF NON-COLLUSION

- 20.1 Neither the Vendor nor any business entity represented by the Vendor has received compensation for participation in the preparation of the items specifications or the General Terms and Conditions related to this IFB.
- 20.2 This Bid has been arrived at independently and is submitted without collusion with any other Vendor, with any competitor or potential competitor, or with any other person or entity to obtain any information or gain any special treatment or favoritism that would in any way limit competition or give any Vendor an unfair advantage over any other Vendor with respect to this IFB.
- 20.3 The Vendor has not accepted, offered, conferred or agreed to confer, and will not in the future accept, offer, confer, or agree to confer any benefit or anything of value to any person or entity related to the School District or any of its members in connection with any information or submission related to this Bid, any recommendations, decision, vote or award related to this Bid, or the exercise of any influence or discretion concerning the sale, delivery, or performance of any product or service related to this Bid.
- 20.4 Neither the Vendor, nor any business entity represented by the Vendor, nor anyone acting for such business entity, has violated the Federal Antitrust Laws or the Antitrust Laws of the State of North Carolina with regard to this Bid; furthermore, this Bid has not been knowingly discussed with nor disclosed to, and will not be knowingly discussed with nor disclosed to another Vendor, competitor, potential competitor or School District officials or personnel whose district is not a member of the Western Co-op, prior to the opening of Bids.
- 20.5 No attempt has been or will be made to induce any other person or entity to submit or to not submit a Bid.

21.0 ASSURANCES REGARDING LEGAL AND ETHICAL MATTERS

- 21.1 The Vendor has noted any and all relationships that might be conflicts of interest and included such information with his/her Bid response.

- 21.2 If this Bid is accepted, in whole or in part, the Vendor will furnish any item(s) awarded to them under this IFB/Contract to the School District at the proposed price and in accordance with the item specifications and the terms and conditions contained in this IFB/Contract. Sub-contracting or out-sourcing of item(s) awarded is not permitted.
- 21.3 The Vendor assures that no one employed by or representing the Vendor shall conduct themselves in a manner that discourages School Districts from joining the Western Co-op or that compromises the integrity of the Western Co-op.
- 21.4 The Vendor 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 IFB/Contract.
- 21.5 The Vendor 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 IFB/Contract it would in no other way whatsoever be disqualified to propose or receive any award or Contract related to this IFB, and the Vendor will comply with any reasonable requests from the School District to supply any information sufficient to substantiate the proposing entity's ability to meet these minimum standards.
- 21.6 The Vendor has identified and disclosed in this written Bid any and all known suspected matters that would disqualify it from participating in this IFB or receiving any award or Contract related to this IFB, recognizing that the Vendor's failure to identify and disclose any such matters constitutes its affirmation that no such matters exist, and that failure to disclose in this Bid any such matters which do exist is a material breach of Contract which would void the submitted Bid or any resulting Contracts, and subject the Vendor to removal from all procurement lists and possible criminal prosecution.
- 21.7 The Vendor 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.
- 21.8 The Vendor 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.
- 21.9 The Vendor shall not have the right to include the name of the School District or the Western Co-op in its published list of customers, without prior approval of both parties. The Vendor agrees not to publish or cite in any form any comments or quotes from District staff or Western Co-op members. The Vendor further agrees not to refer to award of this Contract in commercial advertising in such manner as to state or imply that the products or services provided are endorsed or preferred by the District or the Western Co-op.
- 21.10 Neither the School District nor any of its members shall be liable to the Vendor 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 Vendor in default.
- 21.11 The Vendor shall hold the School District and the Western Co-op harmless from any and all damages and claims that may arise by reason of any negligence on the part of the Vendor, his agents or employees in the performance of the Contract.

22.0 REMEDIES FOR NON-PERFORMANCE OF CONTRACT AND TERMINATION

- 22.1 Except as otherwise provided within the General Terms and Conditions of this document, this Contract may be terminated in whole or in part by either party in the event of substantial failure by the other party to fulfill its obligations under this Contract through no fault of the terminating party; provided that no such termination may be implemented unless and until the other party is given:

Step 1: Warning letter and outline violations and length of time to correct the problem. At least thirty (30) days written notice (delivered by certified mail, return receipt requested) of intent to terminate.

Step 2: Issue letter of Intent to Cancel Contract, if problems not resolved by a given date. At least thirty (30) days notice prior to cancellation.

Step 3: Issue letter to cancel contract. Must be issued 10 days prior to cancellation.

- 22.2 In the case of default by the Vendor awarded the Contract, the School District has the right to purchase any or all items in default in the open market, charging the Contractor with any additional cost. The defaulting Contractor shall not be considered a responsible bidder until the assessed charge has been satisfied.
- 22.3 Termination by the School District for cause, default or negligence on the part of the Vendor awarded the Contract shall be excluded from the foregoing provisions, termination costs, if any, shall not apply. Any advance notice requirements are waived and the default provision in the IFB shall apply. The School District may, by written notice of default to the Contractor, terminate this Contract in whole or in part if the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or renewal.
- 22.4 Valid causes for termination of this Contract shall include, but are not limited to:
- Vendor failure to adhere to any of the provisions of the General Terms and Conditions of this IFB/Contract,
 - Vendor delivering any product(s) that fail to meet the Item Specifications included in this IFB/Contract relating to the awarded product(s),
 - Vendor delivering any substitution(s) of product(s) different than those originally proposed and awarded without the prior approval,
 - Vendor failure to meet the required delivery schedules as identified in the IFB/Contract documents, or
 - Vendor violation of any other provision contained within the General Terms and Conditions or any Attachment or Addendum(s) thereto which provides for Contract termination as a remedy.
- 22.5 In the event the School District terminates this Contract, in whole or in part, for cause or default on the part of the Vendor awarded the Contract, the School District reserves the right to award the canceled Contract, or any portion thereof, to the next lowest or most responsive Vendor as it deems such award to be in the best interest of the School District.
- 22.6 Should any Contract formed hereunder be funded from School District appropriations, and in the event no funds or insufficient funds are appropriated and budgeted in any fiscal year for payments due under a Contract made pursuant to this solicitation, the School District shall immediately notify the Vendor awarded the Contract of such occurrence but the School District shall have no further obligation as to such current or succeeding fiscal year and the Contract shall be null and void, except as to the portions of payment herein agreed upon for the funds which shall have been appropriated and budgeted.
- 22.7 Any Contract termination resulting from any cause other than a Force Majeure event or termination for non-appropriations will be deemed valid reason for not considering any future Bid from the defaulting Vendor.

23.0 FORCE MAJEURE CONSIDERATION

- 23.1 The term Force Majeure shall include, but is not limited to, governmental restraints or decrees, provided they affect all companies in the Vendor's industry equally and are not actions taken solely against the Vendor; acts of God (except natural phenomena, such as rain, wind or flood, which are normally expected in the locale in which performance is to take place); work stoppages due to labor disputes or strikes; fires; explosions; epidemics; riots; war; rebellion; or sabotage.
- 23.2 The parties to this Contract will be required to use due caution and preventative measures to protect against the effects of Force Majeure, and the burden of proving that Force Majeure has occurred shall rest on the party seeking relief under this section. The party seeking relief due to Force Majeure will be required to promptly notify the other party in writing, citing the details of the Force Majeure event, and will be required to use due diligence to overcome obstacles to performance created by the Force

Majeure event, and shall resume performance immediately after the obstacles have been removed, provided the Contract has not been terminated in the interim.

- 23.3 Delay or failure of performance, by either party to this Contract, caused solely by the Force Majeure event shall be excused for the period of delay caused solely by the Force Majeure event, provided the affected party has promptly notified the other party in writing. Neither party shall have any claim for damages against the other resulting from delays caused solely by Force Majeure.
- 23.4 The School Districts will not be responsible for any costs incurred by the Vendor because of the Force Majeure event unless the School Districts has requested, in writing, that the Vendor incur such costs in connection with any delay or work stoppage caused by the Force Majeure event, and the School Districts has agreed, in writing, to incur such additional costs.
- 23.5 A Vendor requesting relief under this provision must adhere to the following conditions prior to the price of any product being adjusted:
1. A formal, written request for a price increase must be submitted by the Vendor to the Lead Chairperson of the Western Co-op at least one month prior to the price change taking effect for the following month. A simple majority of the Western Co-op member districts must approve the request. The request will include the Force Majeure cause as listed above substantiating the reason the relief is being requested.
 2. Documentation to substantiate the increase must be included with the request and signed by a representative from the Manufacturer.
 3. Documentation from the Distributor must also be included to provide evidence that the price was obtained from at least two other sources which would be higher than the requested increase; this could also include documentation to substantiate non-availability of product.
 4. Failure to comply with all three provisions shall be cause for a request being denied.
- 23.6 Notwithstanding any other provision of this section, in the event the Vendor's performance of its obligations under this Contract is delayed or stopped by a Force Majeure event, the School Districts 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 Districts' rights as provided elsewhere in this Contract.

24.0 WAIVER

- 34.1 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.

25.0 RIGHT TO ASSURANCE

- 25.1 Whenever one party to this Contract in good faith has reason to question the other party's intent to perform in accordance with the terms and conditions of the Contract, the questioning party may demand that the other party provide written assurance of intent to perform. In the event a demand is made and no written assurance is given within five (5) days, the demanding party may treat the lack of response and subsequent failure as an anticipatory repudiation of the Contract.

26.0 ADDITIONAL AREAS OF REGULATORY COMPLIANCE

- 26.1 The Vendor 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.

- 26.2 The Vendor agrees to comply with all mandatory standards and policies relating to energy efficiency as cited in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94 –163).
- 26.3 The Vendor shall comply with Executive Order 11246, entitled Equal Employment Opportunity, as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations, 41 CFR Part 60.
- 26.4 The Vendor shall comply with the following Civil Right Act of 1964 as amended. The Vendor awarded the Contract shall comply with applicable Federal, State and local laws and regulations pertaining to wages, hours, and conditions of employment. In connection with the Vendor's performance of work under this Contract, the Vendor agrees not to discriminate against any employee(s) or applicant(s) for employment because of age, race, religious creed, sex, national origin or handicap. The Vendor shall also comply with other Civil Rights laws as amended including 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".
- 26.5 The Vendor awarded the Contract shall comply with the provisions of the Consumer Product Safety Act.
- 26.6 The Vendor awarded the Contract must comply with the State of North Carolina Conflict of Interest requirement as defined in General Statute Chapter 14-234.
- 26.7 Bids that have been certified by the North Carolina Department of Administration as Historically Underutilized Business (HUB) Entities are required to indicate their HUB status when responding to the IFB. The Vendor shall submit evidence of **HUB Certification in Attachment G**
- 26.8 Submission of Certification of Contracts, Grants, Loans, cooperative Agreements and Lobbying is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31 U.S. Code. Any Vendor 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. Certification should be provided in **Attachment H**.
- 26.9 The Vendor is required to complete, sign and attach the Debarment and Suspension Certification Form after accessing North Carolina Department of Administration website and checking the debarment section at <http://www.doa.state.nc.us/PandC/actions.asp> The signed form should be included as **Attachment I**.
- 26.10 In accordance with North Carolina G.S. 14-208.18, all persons who (1) are required to register under the Sex Offender and Public Protection Program and (2) have been convicted of any sexually violent offense or any offense in which the victim was under the age of 16 years at the time of the offense are expressly forbidden to knowingly be present on any property owned or operated by the School District. In order to comply with this policy, Vendors are required to conduct an annual check of the State Sex Offender Registry and Public Protection Program and the State Sexually Violent Predator Registration Program on all employees who may be sent to perform tasks on or deliver products to school property. Persons who are subject to this registry may not be sent on to school property for any reason. The Vendor must submit the procedure for complying with this General Statute in **Attachment J**.

VENDOR'S REQUIRED ATTACHMENTS TO THE IFB

- Attachment A** **Bid Specification Spreadsheet(s)**
- Attachment B** **Produce GAP or Food Safety Certification**
- Attachment C** **Vendor's Food Recall Policy/Procedures Summary**
- Attachment D** **Vendor's HACCP Plan Summary**
- Attachment E** **Vendor's Evidence of Required Insurance**
- Attachment F** **Vendor Information Page**
- Attachment G** **HUB Certification**
- Attachment H** **Certification for Contracts, Grants, Loans, Cooperative Agreements and Lobbying**
- Attachment I** **Instructions for Certification, Debarment, Ineligibility and Voluntary Exclusion**
- Attachment J** **Registered Sex Offenders Banned From All School Property**

Bid Specification Spreadsheet(s)

**Produce GAP (Good Agricultural Practices) Certification
or other Food Safety Certification**

Attachment C

Vendor's Food Recall Policy/Procedures Summary

Vendor's HACCP Plan Summary

Attachment E

Vendor's Evidence of Required Insurance

Attachment F
Vendor Information Form

Company Name: _____

Contact Person for Orders:_____

Office Phone: _____

Cell Phone: _____

Fax: _____

E-mail: _____

Contact Person for Detailed Product Information (ingredient listings and nutrient analysis):

—

Office Phone: _____

Cell Phone: _____

Fax: _____

E-mail: _____

Contact Person for Billing Questions, Credits, Damaged or Incorrect Products, etc.:

Office Phone: _____

Cell Phone: _____

Fax: _____

E-mail: _____

Attachment G

HUB Certification

Historically Underutilized Business (HUB) Certification

Companies submitting Bids that have been certified by the North Carolina Department of Administration as Historically Underutilized Business (HUB) Entities are encouraged to indicate their HUB status when responding to this IFB.

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:**

- **Minority**
- **Small Business**
- **Women Owned**

Company Name (Print)

Signature of Authorized Representative

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

Company Name (Print)

Authorized Representative _____ **Signature of**

Attachment H

Certification for Contracts, Grants, Loans, and Cooperative Agreements/Lobbying

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

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal Contract, grant, loan, or cooperative agreement.
2. If any funds other than 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 the 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.

Company Name (Print)

Authorized Signature

Date

Attachment I

Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, Title 7 CFR Part 3017, §3017.510, Participants responsibilities. The regulations were published as

Part IV of the January 30, 1989, *Federal Register* (pages 4722-4733). Copies of the regulations may be obtained by contacting the USDA agency with which this transaction originated.

1. The prospective participant certifies, by submission of this Bid, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
2. Where the prospective lower-tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this Bid.

Organization Name (print) IFB #

Name and Title of Authorized Representative (print)

Signature Date

By signing and submitting this form, the prospective Vendor is providing certification they have accessed and verified at the following website: <http://www.doa.state.nc.us/PandC/actions.asp> that the Vendor is not currently debarred or suspended from conducting business in the state of North Carolina.

Attachment J

Statement and Verification Procedure for Vendor Employee Registered Sex Offender Check

Attachment K

List of Bidders

SYSCO Food Services of Charlotte
4500 Corporate Dr. NW
Concord, NC 28027
Attn: Lynn Maney-McIntosh
Phone: 704.723.6092
Maney-mcintosh.lynn@cha.sysco.com
Threadgill.eric@cha.sysco.com
Gillum.jim@cha.sysco.com

Merchants Foodservice
PO Box 695
Newberry, SC 29108
Attention: Glenda Longo
Phone: 800.264.0510
gmlongo@merchantsfoodservice.com

US Foodservice, Inc.
125 Fort Mill Parkway
Fort Mill, SC 29715
Attn: Judy Jaro
Phone: 803-802-6335
Judy.Jaro@usfoods.com

Institution Food House
P. O. Box 2947
Hickory, NC 28603
Attn: Angelia Baker
Phone: 828.725.4500
abaker@IFH.com

The Reinhardt Company
100 Buffalo Road Extension
Johnson City, TN 37604
Attn: Randy Rimmer
Phone: 800.257.9516 ext 5160
rerimmer@rfsdelivers.com