

Haywood County Schools School Nutrition Department Instructions to Bidders

Bid Number: 031819

Bid Name: Dairy Products

Date Issued: May 21, 2018

Bid Submission Deadline: June 8, 2018 at 11:00am

Bid Opening: June 8, 2018 at 11:00am at Haywood County School Nutrition, 5855 Crabtree Rd. Clyde, NC 28721.

INVITATION FOR BIDS:

Sealed bids are being solicited for the merchandise, services, and/or equipment as set forth in this Bid Invitation by the Haywood County Schools School Nutrition Department in accordance with the attached specifications, terms and conditions.

Completed bid documents must be received by the Haywood County School Nutrition Department, Attn: Alison Francis, School Nutrition Director, 5855 Crabtree Rd. Clyde, NC 28721. (828) 627-1150 before the due date to be considered. Late proposals will be returned to the bidder unopened.

Proposals must be submitted in a sealed envelope and properly marked with the Product Category, Opening Date and Time as follows:

The contract time period for this bid is July 1, 2018 through June 30, 2019. However, Haywood County Schools School Nutrition Department does reserve the right to award the bid to a vendor for a longer period.

Bids may be withdrawn prior to the opening date and time, but only in accordance with section #17 of the General Terms and Conditions Documents entitled "Withdrawal or Modifications of Bid." Proposals received without proper signature are not acceptable.

Questions regarding this Bid Invitation should be received at the following address at least 3 working days before the bid opening:

Haywood County Schools
School Nutrition Department
Attn: Alison Francis, School Nutrition Director
5855 Crabtree Rd.
Clyde, NC 28721
Telephone: (828) 627-1150
Email: afrancis@Haywood.k12.nc.us

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, 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, audiotope, 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: http://www.ascr.usda.gov/complaint_filing_cust.html, 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.

This institution is an equal opportunity provider.

A. General Provisions

1. Bid Preparation and Submission Procedures

Sealed bids will be received until the deadline indicated in the Bid Certification.

Each bid must be submitted in a **SEALED** opaque envelope (or other non-transparent package or container). The outside of the bid envelope (or other package or container) must bear the following information in clear and legible form:

- a) In the upper left-hand corner: print the full name and address of the bidding entity, and the name and telephone number, including the area code, of the person to contact with questions about the bid submission; and
- b) In the lower left-hand corner: "SEALED BID," the bid name, bid number, and submission deadline indicated on the Bid Certification.

Bids may be submitted by the U.S. Mail, common carrier, or other courier or delivery service, or by hand delivery. If submitted other than U.S. Mail, bids should be delivered to the physical location of the department – Haywood County School Nutrition, 5855 Crabtree Rd. Clyde, NC 28721. If forwarded by mail or courier or delivery service, the **sealed** bid envelope, indicated above should be enclosed in **another envelope** addressed as specified below. Haywood County Schools School Nutrition Department will not be responsible for bids or related correspondence that are delivered to the wrong address or misplaced. The date/time record of the School Nutrition Director or designee will indicate the official time of receipt.

Bids should be mailed or delivered to:

Haywood County School Nutrition
Attn: Alison Francis, School Nutrition Director
5855 Crabtree Rd. Clyde, NC 28721

Bids received after the deadline will not be accepted for consideration, and will be returned unopened. Bids received in an unsealed condition will not be considered. **Faxed bids or related communication will not be accepted.**

A representative of the bidding entity who is authorized to enter into contracts on behalf of the bidding entity must sign bids in ink. The person signing the bid must indicate his/her title along with signature. Bids received without proper signature will not be considered.

Bidders must return all properly signed original documents required in the bid response. Bidders should retain photocopies for their files. Any change made to any written response on any of the bid documents must be made in ink by marking through the original entry and entering the new information alongside the change. Changes should not be made with correction fluid. All changes must be "initialed" by the person making the change, and the name of the person who initialed the change must be noted in a footnote on the same page containing the correction. **Failure to return any**

document or information requested as part of the bid response may result in rejection of the entire bid.

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

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

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

2. Statement of Inclusion/Applicability

These General Terms and conditions are applicable to all Bid Invitations issued by the Haywood County Schools School Nutrition Department, and by this inclusion, they become an integral part of any contract which is awarded, or purchase order which is issued in association with this Bid Invitation.

3. General

The section titles contained in this General Terms and Conditions document are for convenience and reference only, and in no way define, describe, extend, or limit the scope or intent of the provisions of any section of this document. The term "Bid" and "Proposal" may be used interchangeably.

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

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

- a) this General Terms and Conditions document, including any attachments and or amendments thereto,
- b) the Item Specifications included in the Bid Invitation and any subsequent addenda thereto,
- c) the bidder's signed Bid Certification sheet, which must be completed, signed by an authorized representative of the bidding entity, and returned with the bidder's response, along with this ENTIRE Terms and Conditions document and all other forms and information collection pages included with this Bid Invitation,
- d) the bidder's response to the Bid Invitation,
- e) the bidder's Notice of Award document,
- f) And any additional terms, conditions, or instructions issued by any member(s) of the Haywood County School Nutrition Department

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

4. Contract Time Period

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

Upon mutual written agreement of both parties, this contract may be extended beyond the expiration of the contract time period in accordance with section #38 of this General terms and Conditions document entitled "Extension Clause."

The transfer, assignment, or subcontracting of contracts is prohibited, and the bidder agrees not to sell, assign, transfer, convey, or subcontract any portion of this contract resulting from this Bid Invitation without the prior written consent of the Haywood County Schools School Nutrition Department.

5. Addendum

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

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

6. Specifications

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

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

All bids must identify the manufacturer, brand, model, etc. of the article being offered. "**Pre-Approved Equal**" Brands may be allowed where indicated. To bid on "Pre-Approved Equal" items rather than any "approved brand" specified, the bidder must supply a complete description and sufficient data for the School Nutrition Department to properly analyze the product being bid. Samples

may be requested for items other than “approved brands”. These “Pre-approved Equal” brands must be approved by School Nutrition Department **before** the bid opening. Haywood County Schools School Nutrition Department reserves the right to reject approving any brand submitted if the School Nutrition Department does not have sufficient information or testing conducted in order to deem the product as a “Pre-approved Equal”.

If the bidder fails to identify the manufacturer, brand, model, etc. for any item being bid on, the School Nutrition Department will assume the bidder is bidding on **the exact brand and model identified in the specification**, and if awarded, the vendor will be required to furnish the **exact brand names, models, etc. as specified. Substitutions will not be allowed.**

The apparent silence of the specifications as to any detail or the apparent omission from any specification of a detailed description concerning any point shall be regarded as meaning that only the best communication practices shall prevail. All interpretations of the specifications shall be made on the basis of this statement. If you discover or suspect error in the item specifications in this Bid Invitation, please note it as part of your bid response. We will attempt to correct errors for future Bid Invitations.

7. **The Buy American Provision**

Section 104(d) of the William F. Goodling Reauthorization Act of 1998 requires schools participating in the NSLP and the SBP in the contiguous United States to purchase, to the maximum extent practicable, domestic commodities or products for use in meals served under the programs. The legislation defines “domestic commodity or product” as one that is Milk in the United States and is processed in the United States, substantially using agricultural commodities that are Milk in the United States. The report accompanying the legislation stipulated that “substantially” means over 51 percent of the final processed product consists of agricultural commodities that were grown domestically.

Additional Product Requirements: No imported product is permissible when an acceptable domestic product is available, with the exception of pineapple. Each permitted imported product other than pineapple must be pre-approved by the Haywood County Schools School Nutrition Department.

8. **Bid Evaluation and Award**

All bids received in response to this Bid Invitation which are submitted in accordance with the instructions and restrictions contained in #1 of this General terms and Conditions document entitled “Bid Preparation and Submission Procedures” will initially be considered for award; however, initial consideration of any bid will not constitute an assessment of its meeting the necessary qualifications, and any bid may be disqualified at any time during the process of evaluating bids for failure to meet any other terms or conditions contained anywhere else in the Bid Invitation.

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

It is not the policy of Haywood County Schools School Nutrition Department to purchase on the basis of low bid price alone. All bid items are subject to evaluation and approval by the School Nutrition Department. In evaluating the bids received and determining the best value, the School Nutrition Department may consider any combination of the following criteria: (1) the purchase price; (2) the reputation of the vendor and of the vendor’s goods and/or services; (3) the extent to which the goods and/or services meet the needs of the Haywood County Schools School Nutrition Department; (4) the vendor’s location, service, and delivery capabilities; (5) the vendor’s past performance with Haywood

County Schools; (6) student preferences; (7) the warranties offered and the bidder's warranty service history; (8) the probability of continuous availability of the goods/and or services offered; (9) the impact on the ability of the Haywood County Schools School Nutrition Department to comply with any applicable laws or rules; (10) the total long-term cost to the Haywood County Schools School Nutrition Department to acquire the vendor's goods and/or services; (11) packaging or the products and in some cases preferences is given to a vendor who provides all the components relative to the complete package, and (12) any other relevant factor that a public or private entity could consider in selecting a vendor.

It is understood that the Haywood County Schools School Nutrition Department may use all means at their collective disposal to evaluate the bids received on these criteria, and the final decision as to the best overall offer, both as to price and to suitability of the products and/or services offered to fit the needs of the Haywood County School System, will solely rest on the School Nutrition Department of Haywood County.

Unless otherwise indicated in this Bid Invitation, "all or nothing" bids are not acceptable and will be rejected. The bidder must be willing to accept a partial award for any combination of the items and/or services bid, and must be willing to share the business with any other successful bidders.

The successful bidder(s) will be notified by "Notice(s) of Award" issued by the Haywood County Schools School Nutrition Director.

The School Nutrition Department of Haywood County Schools reserves the right to require a performance bond as it is deemed necessary.

B. General Provisions

9. Quantities

Quantities reflected in this Bid Invitation are estimates based on the projected needs for Haywood County Schools during the contract period. Quantities are the best estimate of anticipated needs available at the time of publication of this Bid Invitation, but the accuracy of this estimate of these quantities may be affected by numerous factors including but not limited to, budgetary adjustments, availability of government commodities or other subsidies, changing market forces, unintentional errors or omissions, and changes in school participation. Actual needs may be greater or less than the estimated quantities provided.

Vendors will be notified of significant changes in the estimated quantities, as they become known through the bid period.

Successful bidders will be required to monitor consumption rates and bring any exceptions to the attention of the Haywood County Schools School Nutrition Directors as soon as possible. The School Nutrition Director will communicate slow-moving items to its schools if notified by the vendor. Except for conditions discussed within section #23 of this document entitled "Force Majeure," vendors are required to maintain sufficient inventories to cover the needs of the Haywood County School System with only minimal, occasional, and temporary inability to provide products on a timely basis. Vendors at the close of the contract period agree not to hold the Haywood County Schools School Nutrition Department liable for any inaccuracies in estimated quantities or for any products on hand.

10. Packaging

Unless otherwise provided for in this Bid Invitation, all products supplied under any contract resulting from this Bid Invitation must be packaged in containers that are new, appropriately designed for the products involved, and sturdy enough to protect the products involved in loading, transit, unloading, and storage. Any products supplied under contract resulting from this Bid Invitation for which

palletizing is appropriate must be delivered on standard 48" 4-way pallets in good, serviceable condition.

11. Pricing

- A. All milk contractors submitting bids must include the **JUNE Announcement of Class prices for 3.5% Milk and Butterfat Differentials** for bidding purposes. Bids will be considered responsive if all necessary documents are included.
- B. Should any milk contractor submit an escalation/de-escalation clause in the annual proposal, the contractor will be allowed to escalate the prices only 4 times per year. De-escalation of prices is unlimited.
- C. All price changes must be received in writing at the Central Office by the fifteenth of the month prior to the month in which the change will occur. A copy of the Federal Milk Order must accompany any change in prices. Suppliers are required to submit conversion calculations showing manner of arriving at amount of change.
- D. An escalation/de-escalation change may not occur in this contract prior to September 1, 2014. This means that prices must be firm for the operating months of July and August.
- E. Prices may escalate/de-escalate in accord with changes in Class I raw milk prices based on monthly Federal Milk Order announcements for the applicable geographical zone. Please state the geographical zone that your company adheres to:

Prices for milk delivered can be escalated or de-escalated at the rate of \$0.001 per half-pint for each \$0.15 increase in raw milk per hundred weight.

If during the term of the contract, a successful bidder's net prices to any or all of its other customers in similar market circumstances for any of the same items awarded under this Bid Invitation are reduced below the contracted price, it is understood and agreed that the benefits of such price reduction shall be extended to the Haywood County Schools School Nutrition Department.

12. Delivery and Transportation

- A. Twelve (12) school months that include fifteen (15) traditional plus any summer food service programs.
- B. The frequency of delivery shall be daily to all sites, unless otherwise agreed upon between the successful bidder and the School Nutrition Director.
- C. Deliveries shall be made between the hours of 7:00 a.m. and 2:00 p.m. to each school when the building is open and a staff member is present or at an agreed upon time with the School Nutrition Director. The School nutrition staff member will be required to sign all tickets so that payment for deliveries may be paid by the bookkeeper at the Central Office.
- D. In case of inclement weather forcing cancellation of a school day, deliveries are not to be made. The local news media will have school cancellation information.
- E. 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 the next school day.
- F. Delivery schedules shall be submitted to school district officials for prior approval and shall remain constant from delivery to delivery.
- G. Drivers shall place orders inside the milk box and/or other refrigeration. Two copies of a delivery ticket are to be signed by the cafeteria manager or the designee, before leaving the school unit. Early morning drop-off deliveries made to the schools without a School nutrition employee present to accept the deliveries and sign the ticket will not be reimbursed.
- H. The contractor shall pick up and credit milk on hand prior to school holidays or closings. Damaged or empty cartons of product will be picked up and the school given credit for all such product.
- I. Empty milk crates shall be picked up at each visit.
- J. The amount of product to be delivered to each particular school shall be determined by the cafeteria manager, who will inform the driver from day to day of his/her needs. Deliveries to an individual school are based on the particular needs of each school, and amounts may vary

between schools, as well as from day to day with regard to any one particular school. All goods delivered shall be in the current year standard commercial pack. BCS reserves the right to consider the delivery time offered as a factor in award of contract.

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

Repeated failure to meet delivery dates will constitute a breach of contract by the vendor, and may result in the initiation of actions covered in section #22 of this General Terms and Conditions document entitled "Remedies for Non-Performance of Contract, and Contract Termination" and the associated financial impacts attached thereto, as well as jeopardize any future business from the Haywood County Schools School Nutrition Department.

All freight, delivery, and handling charges are the responsibility of the bidder, and all bid prices must be quoted freight prepaid, F.O.B. destination, and shall include all freight, delivery, and handling charges, including unloading and inside deliveries where required. The bid package includes a summary listing of the number of delivery locations at the time this Bid Invitation was mailed.

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

If the vendor is delivering products out of more than one warehouse or distribution center, all warehouses or distribution centers involved in the distribution plan MUST carry or have timely access to all awarded items and MUST be able to respond to orders in a timely manner. Unless otherwise specified in this Bid Invitation, product substitutions are not allowed, and the involvement of multiple distribution centers will not be construed as to alter the restrictions against product substitutions. In the event the vendors uses multiple distribution centers, the School Nutrition Department will have ONE CONTACT PERSON for overall contract management relative to any contract resulting from any award under this Bid Invitation and the School Nutrition Department WILL NOT be required to deal with multiple vendor contracts for overall contract management.

When the needs of the Haywood County Schools School Nutrition Department require immediate response, the right to pick up products awarded under this Bid Invitation on an "over the counter" basis must be available for the majority of the items awarded to a bidder. Under such circumstances, the School Nutrition Department's personnel may pick up products at the vendor's warehouse location at the bid price with no minimum purchase required.

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

13. Quality

Unless otherwise indicated in the Bid Invitation, all items bid must be new and in first class condition and must conform to the highest standards of manufacturing practice, including containers suitable for shipment and storage. Unless otherwise requested, the School Nutrition Department will not accept "factory seconds" or otherwise inferior goods, and reserves the right to return any such item(s) within (30) days of receipt at vendor's expense.

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

Material Safety Data Sheets (MSDS) on chemicals or any other products customarily requiring MSDS Sheets must be provided for the School Nutrition Department. MSDS Sheets must be delivered along with the first shipment within the contract period. Promptly and at no additional costs the bidder will provide additional Materials Safety Data Sheets. Providing a web site access location to MSDS information is an acceptable alternative.

In an effort to obtain quality products and services, the Haywood County Schools School Nutrition Department may give preference to vendors that are ISO certified. This will contribute to ensuring that vendor's will meet the School Nutrition Departments product use expectations.

14. Product Inspection, Testing, and Defective Items

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

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

The failure of any consumable products (food items) to meet specifications or acceptable chemical or bacterial levels may result in cancellation of the contract in addition to the remedies outlined above. Furthermore, future business from the Haywood County Schools School Nutrition Department could be jeopardized. All products in the School Nutrition Departments' warehouse at the time of any such cancellation must be picked up and credit issued. Latent defects discovered after delivery and acceptance of any products may result in revocation of the acceptance.

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

15. Samples

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

Samples must be furnished free of expense to the School Nutrition Department. Samples must be labeled with the Bid Name and Number, Item Number, Product Identification number(s), and the name of the bidding entity. Do not include samples with the bid response unless otherwise instructed in the Bid Invitation.

All samples will be retained by the School Nutrition Department for a sufficient length of time for proper evaluation. If not destroyed or consumed during examination of testing, samples will be returned to the bidder at the bidder's expense, but only upon written request submitted with the samples at the time the samples were submitted. However, notwithstanding the above samples from the

successful bidder may be retained permanently by the School Nutrition Department for the purpose of determining the quality and workmanship of the delivered items are comparable to the samples. Haywood County Schools School Nutrition Department shall incur no liability for any samples that are damaged, destroyed or consumed during examination or testing.

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

16. Warranties

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

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

This warranty shall survive any inspection, delivery, acceptance, or payment by Haywood County Schools of the Goods. This express warranty is in addition to the Bidder's implied warranties of merchantability and fitness for a particular purpose, which shall not be disclaimed by the Bidder.

17. Withdrawal or Modification of Bid

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

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

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

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

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

18. Substitutions

The School Nutrition Department will not accept any substitutes after items(s) have been awarded as specified, unless such substitutions are deemed to be in the best interest of the Haywood County Schools School Nutrition Department, and unless prior agreements have been reached and reduced to writing regarding such substitutions. Substituting without the prior approval of the School Nutrition Director or designee will constitute a breach of contract by the vendor which may result in the initiation of actions covered in section #22 of this General terms and Conditions document entitled “Remedies for Non-Performance of Contract, and Contract Termination” and the associated financial impacts attached thereto, and may jeopardize any future business from the Haywood County Schools School Nutrition Department.

19. Deviations from Item Specification or General Terms and Conditions

Any and all limitations, expectations, qualifications, special conditions, or deviations from these General Terms and Conditions or any of the item specifications, including the offering of any alternate to the ‘approved brand and/or model’ (where identified) must be clearly noted in detail by the bidder at the time of submission of the bid. The absence of such limitations, exceptions, qualifications, special conditions, or deviations being submitted in writing with the bidder’s response will hold the bidder accountable to the School Nutrition Services to perform in strict accordance with all these General Terms and Conditions and all the item specifications as written, including any such limitations, exceptions, qualifications, special conditions, or deviations with the bid response may place the bidder at a competitive disadvantage or otherwise prevent the Haywood County Schools School Nutrition Department from considering to bid on the affected items(s).

Any deviation from any of the item specifications, including the delivery of any product other than the specific brand and model of the product awarded, will be grounds for rejection of the product(s) when delivered, and will expose the vendor to the remedies identified in section #22 of this General Terms and Conditions document entitled “Remedies for Non-Performance of Contract, and Contract Termination” and may jeopardize future business from the Haywood County Schools School Nutrition Department.

20. Awards

Contracts shall be awarded pursuant to this Request of Bids on the Bid Sheet. Decisions to award contracts pursuant to this Request for Bids shall be based on the following:

- Purchase Price;
- Reputation of the vendor;
- Quality of the vendor’s goods
- Students’ preference;
- Extent to which the goods meet the needs of school system;
- Vendor’s past relationship and performance with the school system;
- Nutritional guidelines
- Long term cost to the school system;
- Any other relevant factors a private business entity would consider in selecting a vendor.

Haywood County Schools reserves the right to accept or reject any and all bids or any portion thereof and to waive any informality or technical defect in any bid.

21. Contract and Purchase Orders

A response to this Bid Invitation is an offer to contract with the Haywood County Schools School Nutrition Department based upon the Item Specifications and the General Terms and Conditions contained in the Bid Invitation. Bids do not become contracts unless and until they are both accepted by the School Nutrition Department through an Award Notice to the bidder, and put into effect by the issuance of a Purchase Order(s) signed by an authorized representative of Haywood County Schools School Nutrition Department.

This contract shall collectively include (1) the General Terms and Conditions and the Item Specifications included in the Bid Invitation and any subsequent addenda thereto, (2) the bidder's signed Bid Certification sheet and any subsequent addenda thereto, (3) the bidder's entire response to the Bid Invitation, (4) the bidder's Notice of Award document, (5) and any additional terms, conditions, or instructions contained in each individual Purchase Order. All the binding agreements should be submitted as part of the bid packet. The contract shall be interpreted by and governed under the laws of the State of North Carolina.

22. Invoices, Packing Lists, and Payment

Packing Lists or other suitable shipping documents must accompany each shipment and must identify (a) the name and address of the vendor, (b) the name and address or delivery location of the receiving entity, (c) the Purchase Order Number, and (d) detailed descriptive information identifying the item(s) delivered, including quantity, item number, product code, item description, number of containers, etc.

All Invoices must reflect (a) the name and address of the vendor, (b) the name and address or delivery location of the receiving entity, (c) the appropriate Purchase Order Number, and (d) detailed descriptive information identifying the item(s) delivered, including quantity, item number, product code, item description, etc., and must include a properly signed copy of the delivery receipt. Invoices must be mailed directly to the School Nutrition Department.

The Haywood County Schools School Nutrition Department will not be held responsible for any products delivered or invoiced without a valid current Purchase Order Number.

The payments stated on each individual Purchase Order will be the controlling factor in the determination of payment terms. At the time of delivery, three (3) copies of the vendor's invoice shall be signed. Two copies are to be left with the cafeteria manager. The vendor shall "post" his records to agree with the invoice left with the cafeteria manager. Each Invoice should include the vendor's normal payment terms in the event that any Purchase Order fails to address the subject.

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

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

Haywood County Schools pays by invoice, not statement. Checks are issued by the 20th of each month for purchases received in the prior month.

If the vendor offers an early payment incentive, Haywood County Schools may negotiate payments options. Please indicate what your early payment incentive is on the Bid Sheet.

23. Remedies for Non-Performance of Contract, and Termination of Contract

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

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

If any delay or failure of performance is caused by a Force Majeure event as described in section #23 of this General Terms and Conditions document entitled "Force Majeure," the School Nutrition Department may, in its sole discretion, terminate this contract in whole or part, provided such termination follows the remaining requirements of this section.

Except as otherwise provided for within the General Terms and Conditions of this document, this contract may be terminated in whole or in part by either party in the event of substantial failure by the other party to fulfill its obligations under this contract through no fault of the terminating party; provided that no such termination may be implemented unless and until the other party is given (1) at least ten (10) days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with the terminating party, followed by a reasonable opportunity, of not more than ten (10) working days, to rectify the defects in products or performance, prior to termination.

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

- a) the vendor's failure to adhere to any of the provisions of the General Terms and Conditions of this Bid Invitation,
- b) the vendor delivering any product(s) that fail to meet the Item Specifications included in this Bid Invitation relating to the awarded product(s)
- c) the vendor delivering any substitution(s) of product(s) different than those originally bid and awarded without the prior written approval of the School Nutrition Director or designee,
- d) the vendor's failure to meet the required delivery schedules as identified in the contract documents, or
- e) The vendor's violation of any other provision contained within these General Terms and Conditions or any attachment thereto which provides for contract termination as a remedy.

Notwithstanding anything contained in this section, in the event of the vendor's breach of any provision in this contract, the School Nutrition Department reserves the right to enforce the performance of this contract in any manner prescribed by law or deemed to be in the best interest of its members, including, but not limited to, the purchase of other products of like type and quality from other sources in the open market. In the event the School Nutrition Department elects to purchase other products from other sources, the School Nutrition Department will invoice the vendor for any increased costs to the Haywood County Schools School Nutrition Department, and the vendor agrees, by submission of a bid response, to promptly pay any such charges invoiced.

In the event the Haywood County Schools School Nutrition Department terminates this contract, in whole or in part, for any reason provided for within the contract, the School Nutrition Department reserves the right to award to canceled contract, or any portion thereof, to the next lowest or best bidder as it deems such award to be in the best interest of its members.

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

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

24. Force Majeure

The term Force Majeure shall include, but is not limited to, governmental restraints or decrees, provided they affect all companies in the vendor's industry equally and are not actions taken solely against the vendor; acts of God (except natural phenomena, such as rain, wind or flood, which are normally expected in the locale in which performance is to take place); work stoppages due to labor disputes or strikes; fires; explosions; epidemics; riots; war; rebellion; or sabotage.

The parties to this contract will be required to use due caution and preventative measures to protect against the effects of Force Majeure, and the burden of proving that Force Majeure has occurred shall rest on the party seeking relief under this section. The party seeking relief due to Force Majeure will be required to promptly notify the other party in writing, citing the details of the Force Majeure event, and will be required to use due diligence to overcome obstacles to performance created by the Force Majeure event, and shall resume performance immediately after the obstacles have been removed, provided the contract has not been terminated in the interim.

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

The School Nutrition Department will not be responsible for any costs incurred by the vendor because of the Force Majeure event unless the School Nutrition Department 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 Nutrition Department has agreed in such writing to incur such additional costs.

Notwithstanding any other provision of this section, in the event the vendor's performance of its obligations under this contract is delayed or stopped by a Force Majeure event, the School Nutrition Department shall have the option to terminate this contract in accordance with section #22 of this 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 Nutrition Department's rights as provided elsewhere in this contract.

25. Non-Collusion Certification

By signing this bid, the bidder certifies that, to the best of his/her knowledge:

- a) neither the bidder nor any business entity represented by the bidder has received compensation for participation in the preparation of the item specifications or the General Terms and Conditions related to this Bid Invitation,
- b) this bid or proposal has been arrived at independently and is submitted without collusion with any other bidder, 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 bidder an unfair advantage over any other bidder with respect to this bid,
- c) the bidder 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 Haywood County Schools School Nutrition Department in connection with any information or submission related to this bid, any recommendation, 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,

- d) neither the bidder, nor any business entity represented by the bidder, nor anyone acting for such business entity, has violated the Federal Antitrust Laws or the antitrust laws of this State with regard to this bid, and this bid or proposal has not been knowingly disclosed, and will not be knowingly disclosed to any other bidder, competitor, or potential competitor prior to the opening of bids or proposals for this project,
- e) No attempt has been or will be made to induce any other person or entity to submit or to not submit a bid or proposal.

The person signing this bid or proposal certifies that he/she has fully informed himself/herself regarding the accuracy of the statements contained in this certification.

26. Lobbying

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 15 CFR Part 28, for persons entering into a grant, cooperative agreement or contract over \$100,000, or loan or loan guarantee over \$150,000, as defined at 15 CFR Part 28, Sections 28.105 and 28.110, the applicant certifies that to the best of his or her knowledge and belief, that:

- a) No Federal appropriated funds have been paid or will paid, by or on behalf or the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, 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 Federal grant, the making of any Federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant loan, or cooperative agreement.
- b) 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 or ay agency, a Member of Congress, and officer or employee of Congress of 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.
- c) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, 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 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.

27. Assignment-Delegation

No responsibility or obligation created by this contract shall be assigned or delegated by the vendor without written permission from the Haywood County Schools School Nutrition Department. Any attempted assignment or delegation by the vendor shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

28. Certifications Regarding Legal, Ethical, and Other Matters

By signing this bid, the bidder certifies that:

- a) he/she has read and understands all the General Terms and Conditions in this document, and agrees to be bound by them, and is authorized to submit bids on behalf of the bidder.
- b) the bidder has noted any and all relationships that might be conflicts of interest and included such information with his/her bid response,
- c) the bid submitted conforms with all item specifications, these General Terms and Conditions, and any other instructions, requirements, or schedules outlined or included in this Bid Invitation,
- d) if this bid is accepted, in whole or in part, the bidding entity will furnish any items(s) awarded to them under this Bid Invitation to the Haywood County Schools School Nutrition Department at the price bid, and in accordance with the item specifications and the terms and conditions contained in this Bid Invitation,
- e) the bidding entity has, or has the ability to obtain, such financial and other resources, including inventories, as may be required to fulfill all the responsibilities associated with this bid,
- f) the bidding entity has a high degree of integrity and business ethics, and a satisfactory record of performances, and has not been notified by any local, state, or federal agency with competent jurisdiction that its standing in any matters whatsoever would preclude it from participating in this bid, it would in no other way whatsoever be disqualified to bid or receive any award or contract related to this bid, and the bidder will comply with any reasonable request from the Haywood County Schools School Nutrition Department to supply any information sufficient to substantiate the bidding entity's ability to meet these minimum standards,
- g) concerning paragraph "F" above, the bidding entity has identified and disclosed in this written bid response any and all known suspected matters that would disqualify it from participating in this bid or receiving any award or contract related to this bid, recognizing that the bidder'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 response any such matters which do exist is a material breach of contract which will void the submitted bid or any resulting contracts, and subject bidder to removal from all bid lists, and possible criminal prosecution,
- h) the bidding entity has obtained, and will continue to maintain during the entire term of this contract, all permits, approvals, or licensed, necessary for lawful performance of its obligations under this contract,
- i) the prices, prompt payment discount terms, delivery terms, distribution allowances, and the quality and/or performance of the products offered in the bid response are and will remain the same or better than those offered to the vendor's most favored customer under equivalent circumstances,
- j) the bidding 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 Haywood County Schools School Nutrition Department harmless against any claims for infringement of any copyrights, patents, or other infringements related to its activities under this contract.,
- k) the bid submitted complies with all federal, state, and local laws concerning these types of products or services, and the bidding entity will continue to comply with any applicable federal, state, and local laws related to the bidding entity's activities in connection with this contract,
- l) the bidding entity will maintain, at the bidding entities expense, any insurance necessary to protect the Haywood County Schools School Nutrition Department from all claims for bodily injury, death, or property damage that might arise from the performance by the bidding entity or the bidding entity's employees or its agents or any service required of the bidding entity under this contract; however, the existence of such insurance will not

- relieve the bidding entity of full responsibility and liability for damages, injury, death, or loss as described or as otherwise provided for by law,
- m) the Haywood County Schools School Nutrition Department shall not be liable to the bidder 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 Haywood County Schools School Nutrition Department declares the bidder in default,
 - n) He/she understands that signing the bid with any false statement is a material breach of contract which will void the submitted bid or any resulting contracts, and subject the bidder to removal from all bid lists, and possible criminal prosecution,
 - o) Vendors must comply with the State of North Carolina Conflict of Interest requirement as defined in General Statutes, Chapter 14-234.

Unless otherwise provided for in this Bid Invitation, any written notice or other communication required by this bid or by law will be conclusively deemed to have been given and received on the second business day after such written notice has been deposited in the U.S. Mail, properly addressed, and with sufficient postage affixed thereto, provided such notice shall not prevent the giving of actual notice in any other manner.

29. Debarment, Suspension and Other Responsibility Matters

As requested by Executive Order 12549, Debarment and Suspension, and implemented at 15 CFR Part 26, for prospective participants in primary covered transactions, as defined in 15 CFR Part 26, Sections 26.105 and 26.110-1) the prospective primary participant certifies to the best of its knowledge and belief, that is and its principals:

- a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by an Federal department or agency;
- b) have not within a three-year period preceding this proposal been convicted of or had a 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 public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c) are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and
- d) have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

By signing this bid, the bidder certifies that the vendor is in compliance with Federal, State and local guidelines. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

30. Compliance with Clean Air and Water Act

By signing this bid, the bidder certifies that the vendor is in compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act of 1970, as amended (42 U.S.C. 1857(h), Section 508 of the Clean Water Act, as amended (33 U.S.C. 1368), Executive Order 117389 and Environmental Protection Agency Regulation, 40 CFR Part 15 as required under OMB Circular A-102, Attachment O, Paragraph 14(l) regarding reporting violations to the grantor agency and to the United States Environment Protection Agency Assistant Administrator of the Enforcement.

31. Compliance with Energy Policy and Conservation Act

By signing this bid, the bidder certifies that the vendor is in compliance with all applicable standards, orders, regulations and policies related to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L 94-163, 89 Stat. 871). [53 FR 8044, 8087, Mar. 11, 1988, as amended at 60 FR 19639, 19641, Apr. 19, 1995]

32. Records Retention

By signing this bid, the bidder understands that the Haywood County Schools School Nutrition Department, 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.

The bidder is required to retain pertinent records for five years after the Haywood County Schools School Nutrition Department makes final payment and all other pending matters are closed.

33. Civil Rights

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

34. Equal Employment Opportunity (EEO) Disclosures

By submission of a bid, the bidder agrees that in the performance of any contract resulting from any award under this bid, the bidding entity will comply with all applicable equal employment opportunity laws and regulations, including but not limited to an agreement not to deny any benefit to, exclude from any opportunity, or discriminate in any way against, any applicant, employee, or any other person because of age, color, creed, gender, handicapping condition, marital status, national origin, political affiliation or belief, race, religion, or veteran status.

Bidder further agrees that the bidding entity is and during the period of any contract resulting from any award under this Bid Invitation will remain, in compliance with Executive Order 11246 entitled "Equal Employment Opportunity" as amended by Executive Order 11375, and supplemented in Department of Labor Regulations (41CFR Part 60).

The occurrence of any prohibited discrimination will constitute vendor's breach of contract due to a substantial failure by the vendor to fulfill its obligations, whereupon the Haywood County Schools School Nutrition Department may terminate the vendor's contract for cause as provided by section #22 of this General Terms and Conditions document entitled "Remedies for Non-Performance of Contract, and Contract Termination."

35. Venue

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

36. Catalogs

For “discount from catalog” bids or other bids based on industry or other “benchmark” pricing lists or tables, it will be the responsibility of the successful bidder(s) to provide the Haywood County Schools School Nutrition Department with a complete, updated catalog and/or price list for all items awarded within five (5) working days of receipt of a Notification of Award. Subsequent additions, deletions, or changes in product specifications may be submitted to the Haywood County Schools School Nutrition Department when they become available.

37. 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.

38. Interpretation -Parole Evidence

This writing is intended by the parties as a final expression of their agreement and a complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties and no usage of the trade shall be relevant to supplement or explain any terms used in this agreement. Acceptance or acquiescence in a course of performance rendered under this agreement shall not be relevant to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection.

39. Right to Assurance

Whenever one party to this contract in good faith has reason to question the other party’s intent to perform he 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.

40. Indemnity and Insurance Requirements

The Bidder shall identify the HCS, its officers, agents, employees and assigns from and against all loss, cost, damages, expenses, attorneys’ fees and liability that any of them may sustain:

- a. arising out of the Bidder’s failure to comply with any applicable law, ordinance, regulation, or industry standard;
- b. arising directly or indirectly out of the Bidder’s performance or lack of performance of the Contract, or
- c. arising out of liens that are asserted relating to the Bidder’s performance or lack of performance of the Contract.

The Bidder further certifies that it currently has and agrees to maintain during the life of the Contract the following insurance from one or more insurance companies acceptable to Haywood County Schools and authorized to do business in the State of North Carolina.

41. Commercial General Liability

The Bidder shall provide bodily injury and property damage liability insurance, including coverage for products liability and completed operations, as shall protect the Bidder from claims of bodily injury or property damage, which arise from performance under the Contract. The policy limits of such

insurance shall not be less than \$1,000,000 bodily injury and property damage liability combined single limit each occurrence/ annual aggregate.

Certificates of such insurance will be furnished by the Bidder to HCS and shall contain the provision that HCS is given 30 days written notice of any intent to amend or terminate by either the Bidder or the insuring company. Failure to maintain such insurance shall be a default under the Contract and shall be grounds for immediate termination of the Contract.

42. Mediation

In the event that a dispute arises out of or related to the Contract, or the breach thereof, which cannot be settled through negotiation, each of the Bidder and HCS agree to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial mediation Rules before resorting to litigation.

43. Delivery Person

Any person that delivers to Haywood County Schools shall not deliver to Haywood County Schools if they are not a Citizen in good standing. Not limited to but shall include: No person shall deliver or have access to Haywood County Schools because of any job responsibility from successful proposer that has been convicted to any violent acts against any person or any illegal acts with a Juvenile. It will be the company's responsibility to insure these items stays in compliance. At any time Haywood County Schools shall be able to request a different driver if the person has been disrespectful and uncooperative with facility.

44. Product Testing

If there is a question raised by a proposer regarding a competitor's product meeting the specifications, or the wholesomeness of any food product(s), a test by an independent laboratory (on the product in question) may be discretion of Haywood County Schools. The proposer(s) raising the question(s) will be billed for the laboratory test should the test establish the products meet the specifications. Should the tested product fail to meet specifications, the proposer(s) that submitted the product(s) will be billed for the laboratory test.

45. Insurance Coverage

Only bona fide contractors having credentials and licenses will be allowed to perform work on campuses of Haywood County Schools. Companies working on Haywood County Schools will have the following minimum amount of insurance coverage:

Workman Compensation: Statutory

General Liability: \$1,000,000/\$1,000,000
(including asbestos coverage, Occurrence Form, no pollution exclusions)

Automobile: Combined Single Liability - \$500,000

46. Extension Clause

This contract may be extended for up to four (4) additional years from the expiration of the Contract period, unless sooner terminated in accordance with the provisions of this Contract, if the vendor and the School Nutrition Department mutually agree, and no increases in costs are incurred, and the

maximum allowable escalation price is capped by the annual national Consumer Price Index, *Cost of Food Away From Home*, increase.

47. Proposal Acceptance

The period for acceptance of this proposal will be thirty (30) calendar days unless the bidder indicates a different period.

48. Questions Regarding Bid

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

Haywood County Schools School Nutrition Department
Attention: Alison Francis, School Nutrition Director
5855 Crabtree Rd., Clyde, NC 28721

Telephone: (828) 627-1150

49. Protest Procedure

Protests of awards exceeding \$10,000 in value must be submitted to the Superintendent of Haywood County School System at the address below. Protests must be received at this office within 15 calendar days from the date of the Contract award and provide specific reasons and any supporting documentation for the protest. Protests should be addressed to:

Haywood County Schools
Attention: Dr. Bill Nolte, Superintendent
1230 North Main Street. Waynesville, NC 28786 Telephone: (828) 456-2440

FORM- A
RETURN THIS DOCUMENT IN SEALED BID PACKET

Haywood County Schools School Nutrition Department
Bid Certification

Bid Name: **Milk Bid**

Bid Opening Date and Time:
Friday, June 8, 2018 @ 11:00 a.m.

Minimum Contract Time Period
July 1, 2018 thru June 30, 2019

Location of Bid Opening:
5855 Crabtree Rd.
Clyde, NC 28721

The undersigned authorized representative of bidding company indicated below hereby acknowledges/certifies:

1. That he/she is authorized to enter into contractual relationships on behalf of the bidding company indicated below, and
2. That he/she has carefully examined this Bid Notice, the accompanying Bid Forms (whether in printed or electronic form), and the General Terms and Conditions and Item Specification associated with the Bid Invitation, unless any exceptions are noted in writing this bid response, and
3. That he/she proposes to supply any products or services submitted under this Bid Invitation at the prices quoted and in strict compliance with the General terms and Conditions, and Item Specifications associated with this Bid Invitation, unless any exceptions are noted in writing with this bid response, and
4. That if any part of this bid is accepted, he/she will furnish all products or services awarded under this bid at the prices quoted and in strict compliance with the General Terms and Conditions, and Item Specifications associated with this Bid Invitation, unless any exceptions are noted in writing with this bid response, and
5. That any and all exceptions to the General Terms or Conditions of this bid have been noted in writing this bid response, and that no other exceptions to the General Terms or Conditions will be claimed.

Name of Bidding Company

Signature of Authorized Representative

Address

City, State, Zip

Printed Name of Authorized Representative

Telephone Number of Authorized Representative

Position or Title of Authorized Representative

Fax Number of Authorized Representative

E-Mail address of Authorized Representative

FORM- B
RETURN THIS DOCUMENT IN SEALED BID PACKET

Haywood County School Nutrition Department
Additional Company Information

Company Name (Please Print)

Contract Person Information:

If contact person or mailing address is different than Form A, please specify below

Mailing Address: _____

Contract Person _____

Position or Title of Contact Person _____

Phone Number of Contact Person _____

Fax Number of Contact Person _____

Email of Contact Person _____

ISO Certified Entity:

The Haywood County School System has the assurance that the quality of products and services received will be as expected when purchased from an organization that is registered to the appropriate ISO standard. Therefore, to assist in this endeavor to purchase quality products, the Haywood County School System may give preference to suppliers that are ISO (International Organization for Standardization) certified.

Is your company ISO Certified? Yes No

Certification: I certify that the information provided above is correct.

FORM- C
RETURN THIS DOCUMENT IN SEALED BID PACKET

Haywood County Schools Dealerships Listing

If your company has more than one location that will servicing this contract, please list each location below. If additional sheets are required, please duplicate this form as necessary or attach list with requested information.

(Please Type or Print)

Company Name

Address

City State Zip

Phone Fax Email

Contact Person

Company Name

Address

City State Zip

Phone Fax Email

Contact Person

FORM- D
RETURN THIS DOCUMENT IN SEALED BID PACKET

Haywood County Schools
Historically Underutilized Business
(HUB) Certification

Bidding companies 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 Bid Invitation.

I certify that my company has been certified by the North Carolina Department of Administration as a 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

Woman Owned

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

Company Name (Please Print)

Signature of Authorized Representative

FORM- E
RETURN THIS DOCUMENT IN SEALED BID PACKET

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

Lobbying

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

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

(2) If any funds other than 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.

Company Name (Please Print)

Signature of Authorized Representative

Date

FORM- F
RETURN THIS DOCUMENT IN SEALED BID PACKET

U.S. DEPARTMENT OF AGRICULTURE

**Certification Regarding Debarment, Suspension, and Other
Responsibility Matters - Primary Covered Transactions**

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

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON NEXT PAGE)

- (1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - (a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - (b) have not within a three-year period preceding this proposal been convicted of or had a civil 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/proposal had one or more public transactions (Federal, State or Local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Company Name (Please Print)

Signature of Authorized Representative

Date

INSTRUCTIONS FOR CERTIFICATION (see above)

1. By signing and submitting this form, the prospective lower tier participant is providing the certification set out on the reverse side 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 proposal 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," "proposal," 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 proposal is submitted for assistance in obtaining a copy of those 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 Nonprocurement 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.

FORM-G
RETURN THIS DOCUMENT IN SEALED BID PACKET

CRIMINAL BACKGROUND CHECKS – LUNSFORD ACT COMPLIANCE (2.1)

Provide an explanation of company policy to provide compliance with the above requirement.

Haywood County Schools
Deviations/ Compliance Form

If the undersigned bidder intends to deviate from the General Terms and Conditions or Items Specifications listed in this bid invitation, all such deviations must be listed on this page, with complete and detailed conditions and information included or attached. The Haywood County Schools School Nutrition Department will consider any deviations in its bid award decisions, and reserves the right to accept or reject any bid based upon any deviations indicated below or in any attachments or inclusions.

In the absence of any deviation entry on this form, the bidder assures the Haywood County Schools School Nutrition Department of their full compliance with the General Terms and Conditions, Item Specifications, and all other information contained in this Bid Invitation.

No Deviations

Deviations as listed

List any deviations your company is submitted below:

Company Name (Please Print)

Signature of Authorized Representative

FORM-I

**Haywood County Schools
No Response Form**

By my signature, I _____

Certify that on _____, 2010 (type name of company) _____

_____ has reviewed Haywood County 's solicitation for Milk and elects not to submit a Bid.

Authorized Signature

Title of Individual

Address of Company

City, State, Zip Code

Telephone Number

Fax Number

FORM-J
RETURN THIS DOCUMENT IN SEALED BID PACKET

Contract Section I – Part II – Fluid Milk

Product List

Item #	Description	Unit	Unit Price	Units Required	Total Price
1	Chocolate Milk, Non-Fat,	½ pt		560,000	
2	Skim Milk	½ pt		20,000	
3	Unflavored Low Fat Milk, 1%	½ pt		250,000	
4	Buttermilk, Non-Fat	½ gal		1,000	
5	Milk, Low Fat, 1%	1 gal		1520	
6	Sour Cream, <u>Low Fat/Fat Free Only</u>	5 lb		100	

- **If you have any additional products that you would like us to consider please include on a separate sheet with nutritional information and pricing.**

The bottom line proposal for milk products included in Section I – Part II is as follows: Check whichever applies to this annual proposal.

_____ With escalation/de-escalation clause

_____ Without the escalation/de-escalation clause

\$ _____

Total Amount of Contract: \$ _____

Name of Company: _____

Signature of Company Representative: _____

Title of Company's Representative: _____

Telephone Number for Ordering Purposes: _____

Telephone Number if there are problems: _____

Date: _____

Haywood County Schools
School Nutrition Department
5855 Crabtree Rd. Clyde, NC 28721

FORMS CHECKLIST (this forms checklist is included for your convenience. Please complete and return all of the attached forms):

Bid Certification--Form A

Additional Company Information--Form B

Dealership Listing --Form C

HUB Certification—Form D

Certification Regarding Lobbying--Form E

Debarment Suspension Certification --Form F

Lunsford Act --Form G

Deviations/Compliance--Form H

No Response – Form I

Bid Specification/Pricing - Form J

Attachments---

HUB Certificate (if applicable)

Disclosure Form to report Lobbying (Form LLL) (if applicable)

Haywood County Schools Service Area Designation

All Inquiries and Monthly Statements should be sent to:

Haywood County Schools, School Nutrition Department

Attention: Mary Ann Shoaf, Bookkeeper

5855 Crabtree Rd. Clyde, NC 28721

Telephone: 828-627-1150

Site Name	Address	ADA
Bethel Elementary	4700 Old River Rd., Canton	511
Bethel Middle	630 Sonoma Rd., Waynesville	253
Canton Middle	60 South Penland St., Canton	550
Central Haywood High	3215 Broad Street, Clyde	75
Clyde Elementary	4182 Old Clyde Rd., Clyde	511
Haywood Early College	185 Freelander Drive, Clyde	155
Hazelwood Elementary	1111 Plott Creek Rd., Waynesville	623
Jonathan Valley Elem	410 Hall Drive, Waynesville	430
Junaluska Elem	2238 Asheville HWY, Waynesville	460
Meadowbrook Elem	85 Morning Star Rd., Canton	281
N. Canton Elem	60 Thompson St., Canton	377
Pisgah High	1 Black Bear Drive, Canton	990
Tuscola High	564 Tuscola School Rd., Waynesville	977
Waynesville Middle	507 Brown Ave., Waynesville	752
Riverbend Elem	77 Learning Lane, Clyde	211

Vendor List

Dean Foods
Attention: Paul Mino
3436 Toringdon Way, Suite 200
Charlotte, NC 28277
Telephone: 800.275.0122

Mayfield Dairy Farm LLC
Attention: Donna Winnegar
P.O. Box 310
Athens, TN 37371-0310
Telephone: 423.745-2151

Maola Milk and Ice Cream Co.
Attn: Ron Kelly
5500 Chestnut Avenue
Newport News, VA 23605
Telephone: 252-349-8941

Southern Belle Dairy Co LLC
607 East Bourne Ave.
Summerset, KY 42501