

## **SPECIAL CONDITIONS**

### **PROGRAM REGULATIONS**

Contractor shall be in conformance with the applicable portions of the School Food Authority's (SFA) agreement under the program. Contractor will conduct program operations in accordance with 7CFR Parts 210, 215, 220, 225, and 250.

Contractor shall provide products that meet the Public Law 111-296, the Healthy, Hunger-Free Kids Act of 2010 (HHFKA). Contractor's products shall meet grade level caloric, sodium, saturated fat, and trans fat requirements.

### **BUY AMERICAN PROVISION**

Contractor will purchase, to the maximum extent practicable, domestic commodities or products in accordance with 7CFR§210.21(d) and 7CFR§220.16(d). Contractor shall purchase, to the maximum extent practicable, domestic agricultural commodities or products substantially processed in the United States. "Substantially" means the final processed product contains over 51% domestically grown agricultural commodities. This provision applies to all food purchases paid from the nonprofit school food services account. There are limited exceptions to this provision which allow for the purchase of products not meeting the "domestic" standard as described above ("non-domestic") in circumstances when use of domestic products is truly not practicable. However, before utilizing an exception, alternatives to purchasing non-domestic food products should be considered.

### **SMALL BUSINESS, MINORITY-OWNED FIRMS, AND WOMEN'S BUSINESS ENTERPRISES**

In accordance with OMB Circular A-110, the District shall make a positive effort to utilize small businesses, minority-owned firms, and women's business enterprises (SMWBE), whenever possible by 1) ensuring that SMWBE are used to the fullest extent practicable; 2) making information on forthcoming opportunities available and arranging time frames for purchases and contracts to encourage and facilitate participation by SMWBE; 3) considering in the contract process whether firms competing for larger contracts intend to subcontract with SMWBE; 4) encouraging contracting with consortiums of SMWBE when a contract is too large for one of these firms to handle individually; and 5) using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of SMWBE.

### DISCLOSURE OF LOBBYING ACTIVITIES

Pursuant to Byrd Anti-Lobbying Amendment 31 USC 1352, Contractor must disclose lobbying activities in connection with school nutrition programs. If there are material changes after the initial filing, updated reports must be submitted on a quarterly basis. 7CFR§3018.100 (Only applies to contracts over \$100,000)

### CERTIFICATION REGARDING LOBBYING

Pursuant to 31 USC 1352, Contractor must submit a certification regarding lobbying which conforms in substance with the language provided in CFR Part 200.450. By signing the Offer & Acceptance form, Contractor shall certify that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative Agreement to pay 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 any of the following covered Federal actions. (Only applies to contracts over \$100,000)

### CERTIFICATE OF INDEPENDENT PRICE DETERMINATION

Offeror agrees that all prices in this Offer have been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other Offeror or with any competitor certification regarding non-collusion.

### CIVIL RIGHTS COMPLIANCE

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

To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at

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[http://www.ascr.usda.gov/complaint\\_filing\\_cust.html](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](mailto:program.intake@usda.gov).

CLEAN AIR ACT, CLEAN WATER ACT, AND ENVIRONMENTAL PROTECTION AGENCY REGULATION

Contractor shall comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738 and Environmental Protection Agency regulations which prohibit the use, under nonexempt federal contracts, grants or loans to facilities included on the EPA List of Violating Facilities. The SFA will report all violations to ADE and to the USEPA Assistant Administrator for Enforcement. (Only applies to contracts over \$100,000)

CONTRACT WORK HOURS AND SAFETY STANDARD ACT

Contractor shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Only applies to contracts over \$2,500)

DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

By signing the Offer & Acceptance form, Contractor shall certify that they have not been debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs under executive order 12549 and 12689. Contractor shall comply with regulations implementing Office of Management and Budget Guidance in Non-procurement Debarment and Suspension codified at 2 CFR Part 180 and 2 CFR Part 417. These regulations restrict transactions with certain parties that are debarred, suspended or otherwise excluded from, or ineligible for, participation in Federal assistance programs or activities. (Only applies to contracts over \$25,000)

ENERGY POLICY AND CONSERVATION ACT

Contractor shall meet the mandatory standards and policies relating 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.)

### EQUAL EMPLOYMENT OPPORTUNITY

Contractor shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapters 60).

### RECORD KEEPING

The books, documents, papers and records of Contractor pertaining to operations under this Agreement shall be available to the SFA at any reasonable time. These records are subject to inspection or audit by duly authorized representatives of the SFA, State Agency, the US Department of Agriculture, and the US General Accounting Office at any reasonable time and place.

The SFA shall maintain such records, for a period of not less than five (5) years after the final day of the contract, or longer if required for audit resolution (A.R.S §35-214). 7CFR§210.23 and 2 CFR Part 200.318(i).

### INVOICING

Contractor fully discloses all discounts, rebates, allowances and incentives received by Contractor from its suppliers. If Contractor receives a discount, rebate, allowance, or incentive from any supplier, Contractor must disclose and return to the SFA the full amount of the discount, rebate, or applicable credit that is received based on the purchases made on behalf of the SFA. Contractor must identify the amount of each discount, rebate and other applicable credit on bills and invoices presented to the school food authority for payment and individually identify the amount as a discount, rebate, or in the case of other applicable credits, the nature of the credit. 7CFR§210.21(f)(1)(iv).

No expenditure may be made from the nonprofit school food service account for any cost resulting from a cost-reimbursable contract that fails to include the requirements of 7CFR§210.21, nor may any expenditure be made from the nonprofit school food service account that permits or results in Contractor receiving payments in excess of the Contractor's actual, net allowable costs. 7CFR§210.21 (f)(2)

### TERMINATION CLAUSE

The contract may be terminated for cause and for convenience by the SFA. Appendix II to 2 CFR Part 200. (Only applies to contracts over \$10,000)

**EDGAR CERTIFICATION**

The following certifications and provisions are required and apply when a District expends federal funds for any contract resulting from this procurement process. Accordingly, the parties agree that the following terms and conditions apply to the Contract between the District and awarded Vendor ("Vendor") in all situations where Vendor has been paid or will be paid with federal funds:

**CONTRACTOR VIOLATION OR BREACH OF CONTRACT TERMS**

Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Pursuant to Federal Rule (A) above, when the District expends federal funds, the District reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

Does Vendor agree? YES      Initials of Authorized Representative of Vendor \_\_\_\_\_

**TERMINATION FOR CAUSE OR CONVENIENCE**

Termination for cause and for convenience by the grantee, or subgrantee, including the manner by which it will be affected, and the basis for settlement. (All contracts in excess of \$10,000)

Pursuant to Federal Rule (B) above, when the District expends federal funds, the District reserves the right to immediately terminate any agreement in excess of \$10,000 resulting from this procurement process in the event of a breach or default of the agreement by Vendor in the event Vendor fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in the procurement solicitation, contract, and/or a purchase order; (2) make any payments owed; or (3) otherwise perform in accordance with the contract and/or the procurement solicitation. The District also reserves the right to terminate the contract immediately, with written notice to vendor, for convenience, if the District believes, in its sole discretion that it is in the best interest of the District to do so. Vendor will be compensated for work performed and accepted and goods accepted by the District as of the termination date if the contract is terminated for convenience of the District. Any award under this procurement process is not exclusive and the District reserves the right to purchase goods and services from other vendors when it is in the District best interest.

Does Vendor agree? YES      Initials of Authorized Representative of Vendor \_\_\_\_\_

EQUAL EMPLOYMENT OPPORTUNITY

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

Pursuant to Federal Rule (C) above, when the District expends federal funds on any federally assisted construction contract, the equal opportunity clause is incorporated by reference herein.

Does Vendor agree? YES      Initials of Authorized Representative of Vendor \_\_\_\_\_

DAVIS-BACON ACT

When required by Federal program legislation, contractor agrees that, for all prime construction contracts in excess of \$2,000, contractor shall comply with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. Current prevailing wage determinations issued by the Department of Labor are available at [www.wdol.gov](http://www.wdol.gov). The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. Contractor further agrees that it shall also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The District must report all suspected or reported violations to the Federal awarding agency.

Pursuant to Federal Rule (D) above, when the District expends federal funds during the term of an award for all contracts and subgrants for construction or repair, Vendor will be in compliance with all applicable Davis-Bacon Act provisions.

Does Vendor agree? YES      Initials of Authorized Representative of Vendor \_\_\_\_\_

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. 3701-3708)

Where applicable, all contracts awarded in excess of \$100,000 that involve the employment of mechanics or laborers, Contractor agrees to comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Pursuant to Federal Rule (E) above, when the District expends federal funds, Vendor certifies that Vendor will be in compliance with all applicable provisions of the Contract Work Hours and Safety Standards Act during the term of an award for all contracts by the District resulting from this procurement process.

Does Vendor agree? YES      Initials of Authorized Representative of Vendor \_\_\_\_\_

RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

Pursuant to Federal Rule (F) above, when federal funds are expended by the District, Vendor certifies that during the term of an award for all contracts by the District resulting from this procurement process, Vendor agrees to comply with all applicable requirements as referenced in Federal Rule (6) above.

Does Vendor agree? YES      Initials of Authorized Representative of Vendor \_\_\_\_\_

CLEAN AIR ACT AND FEDERAL WATER POLLUTION ACT

Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Pursuant to Federal Rule (G) above, when federal funds are expended by the District, Vendor certifies that during the term of an award for all contracts by the District resulting from this procurement process, Vendor agrees to comply with all applicable requirements as referenced in Federal Rule (G) above.

Does Vendor agree? YES      Initials of Authorized Representative of Vendor \_\_\_\_\_

DEBARMENT AND SUSPENSION

Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Pursuant to Federal Rule (H) above, when federal funds are expended by the District, Vendor certifies that during the term of an award for all contracts by the District resulting from this procurement process, Vendor certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

Does Vendor agree? YES      Initials of Authorized Representative of Vendor \_\_\_\_\_

BYRD ANTI-LOBBYING AMENDMENT

Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any



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other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non- Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Pursuant to Federal Rule (I) above, when federal funds are expended by the District, Vendor certifies that during the term and after the awarded term of an award for all contracts by the District resulting from this procurement process, the vendor certifies that it is in compliance with all applicable provisions of the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). The undersigned further certifies that: No Federal appropriated funds have been paid or will be paid for 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 a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.

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 grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all covered sub- awards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

Does Vendor agree? YES      Initials of Authorized Representative of Vendor \_\_\_\_\_

RECORD RETENTION REQUIREMENTS FOR CONTRACTS INVOLVING  
FEDERAL FUNDS

When federal funds are expended by the District for any contract resulting from this procurement process, Vendor certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.333. Vendor further certifies that it will retain all records as required by 2 CFR § 200.333 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

Does Vendor agree? YES      Initials of Authorized Representative of Vendor \_\_\_\_\_

CERTIFICATION OF COMPLIANCE WITH THE ENERGY POLICY AND CONSERVATION ACT

When the District expends federal funds for any contract resulting from this procurement process, Vendor certifies that it will comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.; 49 C.F.R. Part 18).

Does Vendor agree? YES      Initials of Authorized Representative of Vendor \_\_\_\_\_

CERTIFICATION OF EQUAL EMPLOYMENT STATEMENT

It is the policy of the District not to discriminate on the basis of race, color, national origin, gender, limited English proficiency or handicapping conditions in its programs. Vendor agrees not to discriminate against any employee or applicant for employment to be employed in the performance of this Contract, with respect to hire, tenure, terms, conditions and privileges of employment, or a matter directly or indirectly related to employment, because of age (except where based on a bona fide occupational qualification), sex (except where based on a bona fide occupational qualification) or race, color, religion, national origin, or ancestry. Vendor further agrees that every subcontract entered into for the performance of this Contract shall contain a provision requiring non-discrimination in employment herein specified, binding upon each subcontractor. Breach of this covenant may be regarded as a material breach of the Contract.

Does Vendor agree? YES      Initials of Authorized Representative of Vendor \_\_\_\_\_

CERTIFICATION OF COMPLIANCE WITH BUY AMERICA PROVISIONS

the District has a preference for domestic end products for supplies acquired for use in the United States when spending federal funds (purchases that are made with non-federal funds or grants are excluded from the Buy America Act). Vendor certifies that it is in compliance with all applicable provisions of the Buy America Act.

Does Vendor agree? YES      Initials of Authorized Representative of Vendor \_\_\_\_\_

CERTIFICATION OF ACCESS TO RECORDS – 2 C.F.R. § 200.336

Vendor agrees that the District's Inspector General or any of their duly authorized representatives shall have access to any books, documents, papers and records of Vendor that are directly pertinent to Vendor's discharge of its obligations under the Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also

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includes timely and reasonable access to Vendor's personnel for the purpose of interview and discussion relating to such documents.

Does Vendor agree? YES      Initials of Authorized Representative of Vendor \_\_\_\_\_

CERTIFICATION OF APPLICABILITY TO SUBCONTRACTORS

Vendor agrees that all contracts it awards pursuant to the Contract shall be bound by the foregoing terms and conditions.

Does Vendor agree? YES      Initials of Authorized Representative of Vendor \_\_\_\_\_

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VENDOR AGREES TO COMPLY WITH ALL APPLICABLE FEDERAL, STATE, AND LOCAL LAWS, RULES, REGULATIONS, AND ORDINANCES. IT IS FURTHER ACKNOWLEDGED THAT VENDOR CERTIFIES COMPLIANCE WITH ALL PROVISIONS, LAWS, ACTS, REGULATIONS, ETC. AS SPECIFICALLY NOTED ABOVE.

Vendor's Name:

\_\_\_\_\_

Address, City, State, and Zip Code:

\_\_\_\_\_

Phone Number:

Fax Number:

\_\_\_\_\_

Printed Name and Title of Authorized Representative:

\_\_\_\_\_

Email Address:

\_\_\_\_\_

Signature of Authorized Representative:

Date:

\_\_\_\_\_

**MINORITY/WOMEN BUSINESS ENTERPRISE (MWBE) AND HISTORICALLY UNDERUTILIZED BUSINESSES (HUB)**

Bidding companies that have been certified by the State of Arizona as Historically Underutilized Business (HUB) or Minority/Women Business Enterprise (MWBE) entities are encouraged to indicate their HUB and MWBE status when responding to this Bid Invitation.

Vendor certifies that this firm is a MWBE (Required by some participating Yes No  
Vendor certifies that this firm is a HUB (Required by some participating Yes No

Please scan a copy of MWBE and/or HUB certification letter and the percentage of your business with MWBE and/or HUB suppliers, if applicable, in your bid response in the Response Attachments section.

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I, the authorized representative for the company named below, certify that the information concerning residency certification, and MWBE and HUB certifications have been reviewed by me and the information furnished is true to the best of my knowledge.

Contractor's Name/Company Name:

\_\_\_\_\_

Address, City, State, and Zip Code:

\_\_\_\_\_

Phone Number:

Fax Number:

\_\_\_\_\_

Printed Name and Title of Authorized Representative:

\_\_\_\_\_

Email Address:

\_\_\_\_\_

Signature of Authorized Representative:

Date:

\_\_\_\_\_