

# INVITATION FOR BIDS



## PRODUCE

**The Mississippi Department of Education  
Office of Child Nutrition  
500 Greymont Ave. Suite F  
Jackson, MS 39202**

**Bid #26-2150-P005**

**Contact: Steven Webb**

**Submission Due Date: April 30, 2026, 9:00 a.m.**

By submitting a BID, the Offeror certifies that it is registered to do business in the State of Mississippi as prescribed by the Mississippi Secretary of State or, if not already registered, that it will do so within seven (7) business days of being offered an award. Sole proprietors are not required to register with the Mississippi Secretary of State.

# INVITATION FOR BID

<b>IFB Bid Number: 26-2150-P005</b>	<b>Bid Title: PRODUCE</b>
<b>Dates of Advertisements:</b> 1 <sup>st</sup> Advertisement: March 9, 2026 2 <sup>nd</sup> Advertisement: March 16, 2026	<b>Office of Child Nutrition</b> <b>Attn: Steven Webb</b> <b>Pre-Bid Conference:</b> <b>March 30, 2026, 10:30 a.m.</b>
<b>Bid Submission Due Date and Time:</b> <b>Thursday, April 30, 2026, at 9:00 a.m.</b> <b>Bid Opening Date and Time:</b> <b>Thursday, April 30, 2026, at 10:30 a.m.</b>	<b>Deadline for Questions:</b> <b>April 8, 2026, 5:00 p.m.</b>
<b>Bid Review: May 1-15, 2026</b> <b>Contract Intent to Award:</b> <b>May 18, 2026</b>	<b>Date to Post Answers:</b> <b>April 14, 2026</b>
<b>Term of Contract:</b> <b>July 1, 2026 - June 30, 2028</b>	<b>Contract Approval:</b> <b>Friday, June 12, 2026</b>

You are invited to participate in this Invitation for Bid (IFB). Please submit your bid response, all required forms and the vendor acceptance in conformance with the instructions specified herein. By submitting a bid response, the bidder agrees and promises to provide and deliver to the State all products and services contained in this IFB for which a contract is awarded by the State. The bidder shall fully perform the contract in accordance with all specifications, terms and conditions, and requirements contained in the IFB.

By submitting a BID, the Offeror certifies that it is registered to do business in the State of Mississippi as prescribed by the Mississippi Secretary of State or, if not already registered, that it will do so within seven (7) business days of being offered an award. Sole proprietors are not required to register with the Mississippi Secretary of State.

Written acceptance of the bidder's bid response by the State, by issuance of a contract, constitutes a binding contract made with the bidder by and between the Mississippi State Department of Education through the Procurement Director named above, and the bidder named below:

<b>Bidder Company Name:</b>			
<b>Street Address:</b>			
<b>P.O. Box:</b>	<b>City:</b>	<b>State:</b>	<b>Zip Code:</b>
<b>Toll Free Telephone:</b>	<b>Telephone:</b>	<b>Fax:</b>	
<b>Federal I.D. or Social Security No.:</b>		<b>E-Mail:</b>	
<b>Type or Print Name of Person Signing:</b>		<b>Title:</b>	
<b>Authorized Signature:</b>		<b>Date:</b>	

**The Mississippi Department of Education**  
**Terms and Conditions**  
***Produce***

**General Conditions**

**1. PREPARATION OF BID**

This Invitation for Bids (IFB) must be submitted via mail (USPS, Federal Express, etc.) or hand delivered to the Mississippi Department of Education (MDE).

Mail to:	The MS Department of Education Office of Child Nutrition Produce: April 30, 2026 Attn: Steven Webb 500 Greymont Avenue, Suite F PO Box 771 Jackson, MS 39205 <b>(DO NOT OPEN)</b>
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NOTE: The mailing zip code is 39205 while the physical building zip code is 39202.

All bids submitted shall be in compliance with all conditions stated herein. All bid prices and notations must be printed in ink or typewritten. No erasures permitted. Errors may be crossed out and corrections printed in ink or typewritten adjacent and must be initialed, in ink, by the person signing bid. The MDE will not be responsible for delivery delays of lost packets. All risk of late arrivals due to unexpected delays is entirely with the bidder.

- a. Failure to examine any drawings, specifications, and instructions will be at bidder's risk.
- b. Price each item separately. Unit prices shall be shown. Bid prices must be net.
- c. Price options shall not be included or considered unless specified in the solicitation.
- d. Available specifications shall be sufficient to make the terms binding.
- e. Information must be furnished according to bid.
- f. It is understood that reference to available specifications shall be sufficient to make the terms of such specifications binding the bidder. Information must be furnished according to bid specifications. If required, bid evaluation cuts, sketches, descriptive literature, and technical specifications covering the product offered must be submitted.

**2. SUBMISSION OF BID**

All bids shall be signed and sealed. An agent authorized to enter into an agreement must sign the bid. The bidder's name and address must be listed on the outside of the envelope, along with the date of the bid opening, and the IFB number. Bids, bid modifications, or corrections received after 9:00 a.m., central time on April 30, 2026, will not be accepted. The MDE will not be responsible for delivery delays of lost packets. All risk of late arrivals due to unexpected delays delivered by shipping is entirely with the bidder.

**3. RESTRICTIONS ON COMMUNICATIONS WITH THE OFFICE OF PROCUREMENT**

From the issue date of this solicitation until a Contractor is selected and the Contract is signed, Offerors and/or their representatives are prohibited to communicate with any Office of Procurement staff regarding this procurement.

#### **4. ORDER OF COMMUNICATIONS**

Any and all corrections and changes, clarifications, etc., communicated between the MDE and the vendor shall be in writing. Vendor(s) shall assume all risks if acting otherwise. Questions and/or correspondence relating to this bid must be emailed to the Office of Child Nutrition, Steven Webb at [swebb@mdek12.org](mailto:swebb@mdek12.org) by Wednesday, April 8, 2026, at 5:00 p.m. Responses will be posted to the MDE website at [www.mdek12.org](http://www.mdek12.org) under the No-Cost Contract Bid Opportunities will be available to the general public by Tuesday, April 14, 2026. A copy of any corrections, changes or clarification to the bid shall be submitted by mail to The MS Department of Education, Office of Child Nutrition, Steven Webb, Director of Purchasing and Food Distribution at PO Box 771, Jackson, MS 39205. (Physical building zip code is 39202)

#### **5. ACKNOWLEDGMENT OF AMENDMENTS**

Bidders shall acknowledge receipt of any amendment to the solicitation by signing and returning the amendment with the bid, by identifying the amendment number and date in the space provided for this purpose on the bid form, or by letter. The acknowledgment must be received by the MDE by the time and at the place specified for receipt of bids.

#### **6. ACCEPTANCE OF BIDS/RESERVED RIGHTS**

The Mississippi Department of Education (MDE) reserves the right to determine the lowest and/or best bid, reject any and/or all bids, to waive any informality in bids and unless otherwise specified by the bidders, to accept any items on the bid. The MDE reserves the right to modify or cancel in whole or in part its IFB.

#### **7. ERROR IN BID**

Any bid errors found in bid must submit a bid modification to the MDE prior to the due date specified in the IFB. Erroneous bids, where the mistake is apparent, the MDE may correct or delete the error during the bid. If there are any errors in the extension of prices in the bid, the unit price will govern.

#### **8. WITHDRAWAL OF BID**

Bids may be withdrawn with written notice from the bidder who signed the original document prior to the time and date of the bid opening. Any withdrawn or modified offer shall remain unopened in the MDE Procurement File. In accordance with **§25-61-1**, only opened bids shall be available for inspection by participants.

#### **9. AWARD**

It is the intent of the MDE to award a contract to the lowest responsive bidder meeting specifications beginning July 1, 2026, through June 30, 2028. The contract will be awarded for two (2) years with an option to renew for one (1) additional year. The MDE reserves the right to determine the lowest responsible bidder on the basis of an individual item, group of items, or in any way determined to be in the best interests of the State. The award shall be based on the adherence to all conditions and requirements of the bid specifications, and price.

The contract shall consist of this Invitation for Bids Terms and Conditions, Special Conditions, the successful bidder's bid submission, and the written contract award. The contract shall not be assignable in whole or in part without the written consent of the MDE.

MDE reserves the right to ascertain, subsequent to the bid opening, whether or not a bidder meets the requirements to be considered a responsible bidder. If it is determined that the bidder is not a responsible bidder and the determination is substantiated and justified to the satisfaction and approval of the State Superintendent of Education, Dr. Lance Evans, bids submitted by that bidder will be rejected. The criteria used to determine a responsible bidder shall include, but is not limited to, statements in paragraph **68. BIDDER REQUIREMENTS**.

## 10. PRE-BID CONFERENCE

A Pre-Bid conference is scheduled for Monday, March 30, 2026, at 10:30 a.m., at 500 Greymont Avenue, Suite F, Jackson, MS 39202. While attendance at the pre-bid conference is not a requirement to submit a bid, it is highly recommended that bidders and potential bidders attend. All sections of this IFB will be explained.

## 11. PUBLIC BID OPENING

Bid openings will be open to the public. The bid opening will serve only to open and read the bid price on each bid. No discussion will be entered into with any bidder as to the quality or provisions of specifications. No award will be made either stated or implied at the bid opening. All offerors are invited to participate in the bid opening process. The bid opening will take place on Thursday, April 30, 2026, at 10:30 a.m., at the Office of Child Nutrition, 500 Greymont Avenue, Suite F, Jackson, MS 39202.

## 12. RIGHT TO PROTEST

- a. Interested Party means an actual or prospective bidder that may be aggrieved by the solicitation or award of a contract, or by the protest.
- b. Protestor means any actual or prospective bidder who is aggrieved in connections with the solicitation or the award of a contract who files a protest.
- c. Special Assistant Attorney General shall mean the individual assigned by the Attorney General to provide legal assistance to the State agency.

### 12.1 Procedures for Filing Protests

Protestors should seek resolution of their complaints with the OCN. Any actual or prospective bidder who is aggrieved in connection with the solicitation or award of a contract may protest to the Agency Head. The protest shall be submitted in writing within seven (7) calendar days of the award or within seven (7) calendar days of the solicitation posting if the protest is based on the solicitation. A protest is considered filed when received by the Agency head. Protests filed after the seven (7) day period shall not be considered.

### 12.2 Content of Protests

The written protest letter shall contain:

- The name and address of the protester.
- An appropriate identification of the procurement, the procurement number and if a contract has been awarded.
- An explanation of the specific basis for the protest.
- The protesting bidder must provide facts and evidence to support the protest.
- Provide statement of reason for the protest, supporting exhibits, evidence, or documents to substantiate any claim unless not available within the filing time in which case the expected availability date shall be indicated.
- Place protest letter in an envelope clearly marked "Protest"
- A protest is considered filed when received by the MDE, or designee. Protests filed after the seven (7) calendar days shall not be considered.

**Address:** Mississippi Department of Education  
c/o Superintendent of Education  
Protest Letter  
IFB Number:  
PO Box 771  
Jackson, MS 39205

### 12.3 Protest Decision

The MDE in collaboration with the Special Assistant Attorney General shall promptly issue a decision in writing. The decision shall:

- a) state the reason for the action taken; and

b) inform the protestant of its right to administrative review.

### **13. STANDARD TERMS AND CONDITIONS**

Certain terms and conditions are required for contracting. Therefore, the offeror shall assure agreement and compliance with the following standard terms and conditions.

### **14. ACCESS TO RECORDS**

Contractor agrees that the MDE, or any of its duly authorized representatives, at any time during the term of this agreement, shall have access to, and the right to audit and examine any pertinent books, documents, papers, and records of Contractor related to Contractor's charges and performance under this agreement. Such records shall be kept by Contractor for a period of three (3) years after final payment under this agreement, unless the MDE authorizes their earlier disposition. Contractor agrees to refund to the MDE any overpayment disclosed by any such audit. However, if any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of 3-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it.

### **15. ANTI-ASSIGNMENT/SUBCONTRACTING**

Contractor acknowledges that it was selected by the State to perform the services required hereunder based, in part, upon Contractor's special skills and expertise. Contractor shall not assign, subcontract, or otherwise transfer this agreement, in whole or in part, without the prior written consent of the State, which the State may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by the State of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of the State in addition to the total fixed price agreed upon in this agreement. Subcontracts shall be subject to the terms and conditions of this agreement and to any conditions of approval that the State may deem necessary. Subject to the foregoing, this agreement shall be binding upon the respective successors and assigns of the parties.

### **16. APPLICABLE LAW**

The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of law, provisions, and any litigation with respect thereto shall be brought in the courts of the State. Contractor shall comply with applicable federal, state, and local laws and regulations.

### **17. ATTORNEY'S FEES AND EXPENSES**

Subject to other terms and conditions of this agreement, in the event Contractor defaults in any obligations under this agreement, Contractor shall pay to the State all costs and expenses (including, without limitation, investigative fees, court costs, and attorney's fees) incurred by the State in enforcing this agreement or otherwise reasonably related thereto. Contractor agrees that under no circumstances shall the customer be obligated to pay any attorney's fees or costs of legal action to Contractor.

### **18. AUTHORITY TO CONTRACT**

Contractor warrants (a) that it is a validly organized business with valid authority to enter into this agreement; (b) that it is qualified to do business and in good standing in the State of Mississippi; (c) that entry into and performance under this agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind; and (d) notwithstanding any other provision of this agreement to the contrary, that there are no existing legal proceedings or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this agreement.

### **19. NON-APPROPRIATION CLAUSE**

This contract is dependent upon the federal financial funding appropriated for the National School Lunch Act and distributed to school districts within the state. This contract will span more than one appropriation period therefore, a non-appropriation clause shall be in effect. This clause provides that should a contract be canceled for reasons of non-availability of funds, cancellation would take effect on the last day of the appropriation period for which funding was available. In the event of a cancellation for reasons of non-availability of funding, the participating schools will issue no purchase orders subsequent to the last day of the appropriation period and will not be obligated to purchase any items remaining in inventory with the distributor. All purchase

orders issued prior to the effective date of the cancellations will be valid and the distributor will be paid for the merchandise covered by those purchase orders.

## **20. BACKGROUND CHECKS**

Contractor and/or its employees represents neither has ever been convicted or pled guilty or entered a plea of nolo contendere to a felony in any court of the state of Mississippi, another state, or in federal court in which public funds were unlawfully taken, obtained, or misappropriated in the abuse of misuse of any office or employment or money coming into its hands by virtue of any office or employment. Contractor and/or its employees agrees to an initial criminal background check to be performed as well as subsequent criminal background checks that may be necessary and all charges associated with these criminal background checks will be the responsibility of Contractor, if applicable. Any disqualifying information received from the criminal background check will render this agreement null and void.

## **21. COMPLIANCE WITH LAWS**

Contractor understands that the MDE is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful, and Contractor agrees during the term of the agreement that Contractor will strictly adhere to this policy in its employment practices and provision of services. Contractor shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.

## **22. CONFIDENTIALITY**

Notwithstanding any provision to the contrary contained herein, it is recognized that MDE is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act. Miss. Code Ann. §§ 25-61-1 *et seq.* If a public records request is made for any information provided to MDE pursuant to this agreement and designated by the Contractor in writing as trade secrets or other proprietary confidential information, the MDE shall follow the provisions of Miss. Code Ann. §§ 25-61-9 and 79-23-1 before disclosing such information. The MDE shall not be liable to the Contractor for disclosure of information required by court order or required by law.

## **23. CONTRACTOR PERSONNEL**

Contractor agrees that, at all times, the employees of contractor furnishing or performing any of the services specified under this agreement shall do so in a proper, workmanlike, and dignified manner. The MDE shall, throughout the life of the contract, have the right of reasonable rejection and approval of staff or subcontractors assigned to the work by the Contractor. If the MDE reasonably rejects staff or subcontractors, Contractor must provide replacement staff or subcontractors satisfactory to the MDE in a timely manner and at no additional cost to the MDE. The day-to-day supervision and control of Contractor's employees and subcontractors is the sole responsibility of Contractor. MDE reserves the right to request changes in personnel assigned to the project. The MDE Project Manager must pre-approve any changes in key personnel throughout the contract term. Substitutions are not permitted without written approval of the MDE Project Manager.

## **24. COPYRIGHTS**

Contractor agrees the MDE shall determine the disposition of the title to and the rights under any copyright by Contractor or employees on copyrightable material first produced or composed under this agreement. Further, Contractor hereby grants to the MDE a royalty-free, nonexclusive, irrevocable license to reproduce, translate, publish, use and dispose of, and to authorize others to do so, all copyrighted (or copyrightable) work not first produced or composed by Contractor in the performance of this agreement, but which is incorporated in the material furnished under the agreement. This contract is provided that such license shall be only to the extent Contractor now has, or prior to the completion of full final settlements of agreement may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

Contractor further agrees that all material produced and/or delivered under this contract will not, to the best of Contractor's knowledge, infringe upon the copyright or any other proprietary rights of any third party. Should any aspect of the materials become, or in Contractor's opinion be likely to become, the subject of any infringement claim or suit, Contractor shall procure the rights to such material or replace or modify the material to make it non-infringing.

## **25. DEBARMENT AND SUSPENSION**

Contractor certifies to the best of its knowledge and belief, that it:

- a. is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi;
- b. has not, within a three-year period preceding this qualification, been convicted of or had a civil judgment rendered against it 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;
- c. has not, within a three-year period preceding this qualification, been convicted of or had a civil judgment rendered against it for a 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;
- d. is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in paragraph two (2) and (3) of this certification; and,
- e. has not, within a three-year period preceding this qualification, had one or more public transactions (federal, state, or local) terminated for cause or default.

## **26. DEBARMENT AND SUSPENSION CERTIFICATION**

By submitting the signed Invitation for Bids (page 2), the bidder is certifying that neither the bidder nor any potential subcontractors are debarred or suspended or are otherwise excluded from or ineligible for participation in Federal assistance programs.

## **27. DISCLOSURE OF CONFIDENTIAL INFORMATION**

In the event that either party to this agreement receives notice that a third-party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of confidential or otherwise protected information that party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by law. This section shall survive the termination or completion of this agreement. The parties agree that this section is subject to and superseded by Miss. Code Ann. §§ 25-61-1 *et seq.*

## **28. EXCEPTIONS TO CONFIDENTIAL INFORMATION**

Contractor and the State shall not be obligated to treat as confidential and proprietary any information disclosed by the other party ("disclosing party") which:

- a. is rightfully known to recipient prior to negotiations leading to this agreement, other than information obtained in confidence under prior engagements;
- b. is generally known or easily ascertainable by nonparties of ordinary skill in the business of the customer;
- c. is released by the disclosing party to any other person, firm, or entity (including governmental agencies or bureaus) without restriction;
- d. is independently developed by the recipient without any reliance on confidential information;
- e. is or later becomes part of the public domain or may be lawfully obtained by the State or Contractor from any nonparty; or,
- f. is disclosed with the disclosing party's prior written consent.

## **29. E-VERIFICATION**

If applicable, Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008 and will register and participate in the status verification system for all newly hired employees. Mississippi Code Ann. §§ 71-11-1 *et seq.* The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance. Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, Contractor agrees to provide a copy of each such verification. Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this agreement may subject Contractor to the following:

- a. termination of this contract for services and ineligibility for any state or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public;
- b. the loss of any license, permit, certification or other document granted to Contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year or both,
- c. In the event of such cancellation/termination, Contractor would also be liable for any additional cost incurred by the State due to Contract cancellation or loss of license or permit to do business in the State.

### **30. FORCE MAJEURE**

Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of cause beyond the reasonable control and without the fault or negligence of such party and/or its subcontractors. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods or other natural disasters ("force majeure events").

When such a cause arises, Contractor shall notify the MDE immediately in writing of the cause of its inability to perform, how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to force majeure events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the MDE determines it to be in its best interest to terminate this agreement.

### **31. INDEMNIFICATION**

To the fullest extent allowed by law, Contractor shall indemnify, defend, save and hold harmless, protect, and exonerate the agency, its commissioners, board members, officers, employees, agents, and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever including, without limitation, court costs, investigative fees and expenses, and attorney's fees, arising out of or caused by Contractor and/or its partners, principals, agents, employees and/or subcontractors in the performance of or failure to perform this agreement. In the State's sole discretion upon approval of the Office of the Mississippi Attorney General, Contractor may be allowed to control the defense of any such claim, suit, etc. In the event Contractor defends said claim, suit, etc., Contractor shall use legal counsel acceptable to the Office of the Mississippi Attorney General. Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and the State shall be entitled to participate in said defense. The contractor shall not settle any claim, suit, etc. without the concurrence of the Office of the Mississippi Attorney General, which shall not be unreasonably withheld.

### **32. INDEPENDENT CONTRACTOR**

The Contractor shall perform all services as an independent contractor and shall at no time act as an agent for the State. No act performed or representation made, whether oral or written, by Contractor with respect to third parties shall be binding on the MDE.

### **33. INDEPENDENT PRICE DETERMINATION**

The Contractor certifies that the price submitted was independently arrived at without collusion.

### **34. INFORMATION DESIGNATED BY CONTRACTOR AS CONFIDENTIAL**

Any disclosure of those materials, documents, data, and other information which Contractor has designated in writing as proprietary and confidential shall be subject to the provisions of Mississippi Code Annotated §§ 25-61-9 and 79-23-1. As provided in the contract, the personal or professional services to be provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret, or confidential commercial or financial information. Any liability resulting from the wrongful disclosure of confidential information on the part of Contractor, or its subcontractor shall rest with Contractor. Disclosure of any confidential information by Contractor or its subcontractor without the express written approval of the MDE shall result in the immediate termination of this agreement.

### **35. LEGAL AND TECHNICAL SUPPORT**

Contractor shall utilize its knowledge and understanding of applicable legal standards and comply with recognized professional standards and generally accepted measurement principles applicable to assessments and uses of the type described in this contract, including but not limited to standards relating to validity and reliability. The Contractor shall consult with the MDE concerning its implementation of the requirements of this section. In the event of a challenge in which the validity or reliability of the use of an assessment developed under this contract is an issue (other than a challenge based on

infringement of copyright or other proprietary rights of a third party), Contractor shall cooperate with the MDE and/or the State of Mississippi in the defense of the assessment and shall provide reasonable technical and legal support with regard to Contractor's activities under this contract without additional charges to the MDE or the State.

### **36. MODIFICATION OR RENEGOTIATION**

This agreement may be modified, altered, or changed only by written agreement signed by the parties hereto. The parties agree to renegotiate the agreement if federal and/or state revisions of any applicable laws or regulations make changes in this agreement necessary.

### **37. NO LIMITATION OF LIABILITY**

Nothing in this agreement shall be interpreted as excluding or limiting any tort liability of Contractor for harm caused by the intentional or reckless conduct of Contractor or for damages incurred through the negligent performance of duties by Contractor or the delivery of products that are defective due to negligent construction.

### **38. ORAL STATEMENTS**

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specification stated in this contract.

### **39. PRICE ADJUSTMENT**

**Price Adjustment Methods.** Any adjustments in contract price, pursuant to a clause in this contract, shall be made in one or more of the following ways:

- a. by agreement on a fixed price adjustment before commencement of the additional performance;
- b. by unit prices specified in the contract;
- c. by the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract; or,
- d. by the price adjustment clause.

### **40. REPRESENTATION REGARDING CONTINGENT FEES**

Contractor represents that it has not retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in Contractor's bid or qualification packet.

### **41. REPRESENTATION REGARDING GRATUITIES**

The bidder, offeror, or Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Code of Conduct within the OCN Purchasing Division.

### **42. RIGHT TO AUDIT**

Contractor shall maintain such financial records and other records as may be prescribed by the MDE or by applicable federal and state laws, rules, and regulations. Contractor shall retain these records for a period of three years after final payment, or until they are audited by the MDE, whichever event occurs first. These records shall be made available during the term of the contract and the subsequent three-year period for examination, transcription, and audit by the Mississippi State Auditor's Office, its designees, or other authorized bodies.

### **43. RIGHT TO INSPECT FACILITY**

The MDE may, at reasonable times, inspect the place of business of a Contractor or any subcontractor which is related to the performance of any contract awarded by the MDE.

### **44. SEVERABILITY**

If any part of this agreement is declared invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the agreement that can be given effect without the invalid or unenforceable provision, and to this end the

provisions hereof are severable. In such event, the parties shall amend the agreement as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provision in compliance with applicable law.

#### **45. TERMINATION FOR CONVENIENCE**

**Termination.** The Agency Head or designee may, when the interests of the State so require, terminate this contract in whole or in part, for the convenience of the State. Agency Head or designee shall give written notice of the termination to Contractor specifying the part of the contract terminated and when termination becomes effective.

**Contractor's Obligations.** Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination Contractor will stop work to the extent specified. Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. Contractor shall settle the liabilities and claims arising out of the termination of subcontractors and orders connected with the terminated work. The Agency Head or designee may direct Contractor to assign Contractor's right, title, and interest under terminated orders or subcontracts to the State. Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

#### **46. TERMINATION FOR DEFAULT**

**Default.** If a Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract or any extension thereof, or otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Agency Head or designee may notify Contractor in writing of the delay or nonperformance and if not cured in ten days or any longer time specified in writing by the Agency Head or designee, such officer may terminate Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency Head or designee may procure similar supplies or services in a manner and upon terms deemed appropriate by the Agency Head or designee. The Contractor shall continue the performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

**Contractor's Duties.** Notwithstanding termination of the contract and subject to any directions from the Chief Procurement Officer, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest.

**Compensation.** Payment for completed services delivered and accepted by the State shall be at the contract price. The State may withhold from amounts due Contractor such sums as the Chief Procurement Officer deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.

**Excuse for Nonperformance or Delayed Performance.** Except with respect to defaults of subcontractors, Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if Contractor has notified the Agency Head or designee within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, Contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Contractor to meet the contract requirements. Upon request of Contractor, the Agency Head or designee shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled (in fixed-price contracts, "Termination for Convenience," in cost-reimbursement contracts, "Termination"). "Termination for Convenience" (As used in this Paragraph of this clause, the term "subcontractor" means subcontractor at any tier).

**Erroneous Termination for Default.** If, after notice of termination of Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause.

**Additional Rights and Remedies.** The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

**47. TERMINATION UPON BANKRUPTCY**

This contract may be terminated in whole or in part by the MDE upon written notice to Contractor, if Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Contractor of an assignment for the benefit of its creditors. In the event of such termination, Contractor shall be entitled to recover just and equitable compensation for satisfactory work performed under this contract, but in no case shall said compensation exceed the total contract price.

**48. TRADE SECRETS, COMMERCIAL AND FINANCIAL INFORMATION**

It is expressly understood that Mississippi law requires that the provisions of this contract which contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.

**49. TRANSPARENCY**

This contract, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983," and its exceptions. See Mississippi Code Ann. §§ 25-61-1 *et seq.* and Mississippi Code Annotated § 79-23-1. In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Mississippi Code Annotated §§ 27-104-151 *et seq.* Information identified by Contractor as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.

**50. UNSATISFACTORY WORK**

If, at any time during the contract term, the service performed, or work done by Contractor is considered by the Agency to create a condition that threatens the health, safety, or welfare of the citizens and/or employees of the State of Mississippi, Contractor shall, on being notified by the Agency, immediately correct such deficient service or work. In the event Contractor fails, after notice, to correct the deficient service or work immediately, the Agency shall have the right to order the correction of the deficiency by separate contract or with its own resources at the expense of Contractor.

**51. GIFTS, REBATE, GRATUITIES**

Acceptance of gifts from bidders is prohibited. No officer or employee of the MDE, nor any head of any state department, institution or agency, nor any employee of any state department, institution or agency charged with responsibility of initiating requisitions, shall accept or receive, directly or indirectly, from any person, firm or corporation to whom any contract for the purchase of materials, supplies, or equipment for the State of Mississippi may be awarded, by rebate, gifts, or otherwise, any money or anything of value whatsoever, or any promise, obligation or contract for future rewards or compensation.

Bidding by state employees is prohibited. It is unlawful for any state official or employee to bid on, or sell, or offer for sale, any merchandise equipment or material, or similar commodity to the State during the tenure of his or her office or employment, or for the period prescribed by law thereafter, or to have any interest in the selling of the same to the State.

**52. TAXES**

Purchases made under the provisions of any contract established, as a result of this invitation, are exempt from Federal, State, and local taxes and bidders should quote prices which do not include such taxes. Participant organizations include private, non-profit organizations which may be required to pay the distributor some level of sales tax. It shall be the responsibility of the contractor to determine and collect taxes from participant organizations that are required to pay taxes.

**53. SPECIFICATION CLARIFICATION**

It shall be incumbent upon all bidders to understand the provisions of the specifications and to obtain clarification prior to the time and date set for the bid opening. Such clarification will be answered only in response to a written request submitted

in the specified amount of time set by the MDE. The MDE reserves the right to specify a time frame in which clarification requests shall be made.

#### **54. NONRESPONSIVE BIDS**

Nonresponsive bids will not be considered. A non-responsive bid is considered to be a bid that does not comply with the minimum provisions of the specification. Any bidder found to repeatedly offer alternated products that are not compliant with specifications in an attempt to obtain a contract on the basis of pricing only will be disqualified from bidding for a period of 24 months.

#### **55. BID INFORMATION**

Bid information and documents may be examined pursuant to the Mississippi Public Records Act of 1983, MS Code 25-61-1 et seq.

#### **56. PRECEDENCE**

Bids shall be made, and the contract shall be entered into in accordance with the General Conditions as hereinafter amended and modified. Should a conflict exist between the General Conditions and the Instructions and Special Conditions, the Instructions and Special Conditions shall take precedence.

#### **57. COMPETITION**

There are no federal or state laws that prohibit bidders from submitting a bid lower than a price or bid given to the U.S. Government. Bidders may bid lower than U.S. Government contract price without any liability as the State is exempt from the provisions of the Robinson-Patman Act and other related laws. In addition, the U.S. Government has no provisions in any of its purchasing arrangements with bidders whereby a lower price to the State must automatically be given to the U.S. Government.

#### **58. APPLICATION**

It is understood and agreed by the bidder that any contract entered into as a result of this IFB is established for use by the MDE and all purchases made by these agencies for products included under the provisions of the contract shall be purchased from the bidder receiving the award unless exempt by special authorization from the MDE. This contract is entered into solely for the convenience and for any economic advantage afforded to participating organizations of the State of Mississippi. All purchases made by participating organizations of products included under the provisions of this contract shall be purchased from the contracted distributor and shall be the manufacturer's labeled product as specified by the contract. Distributors will not be permitted to substitute any item except as may be approved by the MDE. Employees of the MDE have acted exclusively as agents of the State for the award, consummation, and administration of the contract and are not liable for any performance or nonperformance by the State agencies that utilize the contract.

#### **59. ADDENDA**

Addenda modifying plans and/or specifications may be issued if time permits. No addendum will be issued within a period of two (2) working days prior to the time and date set for the bid opening. Should it become necessary to issue an addendum within the two (2) day period prior to the bid opening, the bid date will be reset to a date not less than five (5) working days after the date of the addendum, giving bidders ample time to comply with the addendum. When replying to a bid request on which an addendum has been issued, and the specifications require acknowledgement, the bid shall indicate that provisions of the addendum have been noted and that the bid is being offered in compliance therewith. Failure to make this statement may result in the bid being rejected as not being in accordance with the revised specifications or plans.

#### **60. CONTRACT EXTENSION**

Automatic contract renewals or extensions are not allowed. Contracts must be extended or renewed with the proper documents signed or approved by the MDE. The MDE reserves the right to extend the term of a contract, when necessary, to continue a source of supply whenever new or replacement contracts are not completed prior to the expiration date. Such extensions are dependent upon the agreement of the Contractor and shall not exceed three (3) months.

#### **61. SUBSTITUTIONS DURING CONTRACT**

During the term of a contract, if adequate documentation is provided that supports the claim that the contract item(s) are not available, items which meet the minimum specifications may be substituted if approved by the MDE and the substitutions are deemed to be in the best interest of the State.

## **62. WARRANTY**

Vendor warrants that all goods and services furnished hereunder shall conform in all respects to the terms of this solicitation, including any drawings, specifications or standards incorporated herein, and they shall be free from latent and patent defects in materials, workmanship, and title, and shall be free from such defects in design. In addition, the vendor warrants that said goods and services shall be suitable for, and shall perform in accordance with, the purposes for which they are purchased, fabricated, manufactured, and designed for such other purposes as are expressly specified in this solicitation. The MDE may return any nonconforming or defective items to the vendor or require correction(s) or replacement(s) of the item at any time the defect is discovered, all at the vendor's risk and expense. Acceptance shall not relieve the vendor of its responsibility.

## **63. NON-DISCRIMINATION CLAUSE**

The contractor hereby agrees that it will comply with:

Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.)

Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.)

Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794)

Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.)

Title II and Title III of the Americans with Disabilities Act (ADA) of 1990 as amended by the ADA Amendment Act of 2008 (42 U.S.C. 12131-12189)

Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." (August 11, 2000) All provisions required by the implementing regulations of the Department of Agriculture (USDA) (7 CFR Part 15 et seq.) Department of Justice Enforcement Guidelines (28 CFR Parts 35, 42 and 50.3) Food and Nutrition Service (FNS) directives and guidelines to the effect that, no person shall, on the grounds of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under any program or activity for which the Program applicant receives Federal financial assistance from USDA; and hereby gives assurance that it will immediately take measures necessary to effectuate this Agreement.

The USDA non-discrimination statement that 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, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). This assurance is given in consideration of and for the purpose of obtaining any and all Federal financial assistance, grants, and loans of Federal funds, reimbursable expenditures, grant, or donation of Federal property and interest in property, the detail of Federal personnel, the sale and lease of, and the permission to use Federal property or interest in such property or the furnishing of services without consideration or at a nominal consideration, or at a consideration that is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale, lease, or furnishing of services to the recipient, or any improvements made with Federal financial assistance extended to the Program applicant by USDA. This includes any Federal agreement, arrangement, or other contract that has as one of its purposes the provision of cash assistance for the purchase of food, and cash assistance for purchase or rental of food service equipment or any other financial assistance extended in reliance on the representations and agreements made in this assurance.

By accepting this assurance, the contractor agrees to compile data, maintain records, and submit records and reports as required, to permit effective enforcement of nondiscrimination laws and permit authorized USDA personnel during hours of program operation to review and copy such records, books, and accounts, access such facilities and interview such personnel as needed to ascertain compliance with the nondiscrimination laws. If there are any violations of this assurance, the Department of Agriculture, FNS, shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the contractor, its successors, transferees and assignees as long as the contract is in effect.

The person or persons whose name(s) appear on this invitation for bid are authorized to sign this assurance on behalf of the contractor. The bidder agrees not to discriminate against any employee or applicant for employment to be employed in the performance of such contract, with respect to hire, tenure, terms, conditions or privileges, of employment, or any matter directly or indirectly related to employment, because of race, color, religion, natural origin, age, sex, height, weight or marital status. The bidder further agrees to require similar provisions from subcontractors or suppliers.

#### **64. INSPECTION**

Final inspection and acceptance or rejection may be made at delivery destination, but all materials and workmanship shall be subject to inspection and test at all times and places, and when practicable. During manufacture, the right is reserved to reject articles which contain defective material and workmanship. Rejected material shall be removed by and at the expense of the contractor promptly after notification or rejection. Final inspection and acceptance or rejection of the materials or supplies shall be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the State or any subdivision thereof for such materials or supplies as are not in accordance with the specification. In the event necessity requires the use of materials or supplies not conforming to the specification, payment therefore may be made at a proper reduction in price.

#### **65. WAIVER**

The MDE reserves the right to waive any General Condition, Special Condition, or minor specification deviation when considered to be in the best interest of the State.

#### **66. PAYMENT TERMS**

Contracts developed from the award of this bid are to establish pricing for food and supplies, and the distribution of those items by the awarded contractors to participating organizations. Payments to contracted distributors will be made by participating organizations within 45 days of receipt of goods and correct invoice. If a participating organization falls more than forty five (45) days in arrears in payments, a distributor may suspend issues. However, the distributor must notify the MDE no less than 10 working days prior to initiating a suspension of deliveries.

Purchase orders generated for items placed on the MDE on-line ordering system must only include allowable, allocable costs of goods for the use of school foodservice authorities solely. Allowable, allocable costs are considered to be the cost of goods for use by school foodservice programs exclusively

#### **67. CANCELLATION**

Any contract or item award may be canceled with or without cause by the State with the giving of 30 days written notice of intent to cancel. Cause for the State to cancel may include, but is not limited to, cost exceeding current market prices for comparable purchases; request for increase in prices during the period of the contract; or failure to perform to contract conditions. The Contractor will be required to honor all purchase orders that were prepared and dated prior to the date of expiration or cancellation if received by the Contractor within a period of 30 days following the date of expiration or cancellation. Cancellation by the State does not relieve the Contractor of any liability arising out of a default or nonperformance. If a contract is canceled by the State due to a contractor's request for an increase in prices or failure to perform, that Contractor will be disqualified from bidding for a period of 24 months. The Contractor may cancel a contract for cause with the giving of 30 days written notice of intent to cancel. Cause for the Contractor to cancel may include but is not limited to the item(s) being discontinued and/or unavailable from the manufacturer.

**The Mississippi Department of Education  
Produce  
SPECIAL CONDITIONS**

The bid shall be offered, and the contract shall be entered into in accordance with the general conditions. However, should a conflict exist between the general conditions and the special conditions, the special condition shall take precedence. Further, it is to be understood that the Mississippi Department of Education (MDE) reserves the right to waive any general or special condition if it is in the best interest of the State, so long as the waiver is not given so as to deliberately favor any single vendor and the waiver would have the same effect on all bidders.

**SCOPE**

The purpose of this Invitation for Bids is to establish contracts between the Mississippi Department of Education and distributors for procurement, storage and distribution of produce items used in Child Nutrition Programs throughout the state by region. This contract will establish a maximum fixed fee that participating School Food Authorities (SFAs) and other qualified organizations will pay for any item covered by the contract during the term of that contract. The actual produce cost will be established between MDE and the successful bidder based on price requests submitted by the produce distributor and third-party market bulletins (i.e. United States Department of Agriculture -Agriculture Marketing Services). The successful distributor(s) will be responsible for purchasing, warehousing and distributing the produce products. Distributors are obligated to furnish the items covered by the contract at prices that do not exceed the contract price.

**68. BIDDER REQUIREMENT**

Failure to meet the minimum requirements shall result in bid being disqualified.

Bidders responding to this IFB shall be established vendors regularly engaged in the business of sourcing, warehousing, and delivery of fresh produce with at least five (5) years of experience in the business.

Bidders must, upon request of the State, furnish satisfactory evidence of their ability to furnish fresh produce in accordance with the terms and conditions of these specifications. This may also include the bidder's financial statement. The MDE reserves the right to make the final determination as to the bidder's ability.

**69. ASSIGNMENT**

The awarded vendor shall not assign or subcontract in whole or in part, its right or obligations under this agreement without prior written consent of the MDE.

**70. TERM**

The term of these contracts shall be for a period of twenty-four (24) months with an option to renew for an additional one (1) year. The effective date is expected to be July 1, 2026, through June 30, 2028. The MDE reserves the right to extend the contract term, when necessary to continue a source or sources of supply whenever new or replacement contracts are not completed prior to the expiration date.

**71. REPORTS**

At the end of the term or as directed by the MDE OCN, the Contractor shall furnish a complete summary of all items sold during the current contract period as specified by the MDE OCN.

This summary shall include item number, description of item, units sold and prices. An additional report must indicate each MDE program and school district to which sales have been made, the location of each, date of the sale and the total dollar sales for the current contract period as specified by the MDE OCN.

The report should be compiled in MS Excel format. Failure to comply with these requests will result in disqualification from bidding for a period of 24 months.

## 72. EVALUATION AND AWARD

Rejection. The MDE reserves the right to reject any bid. Prices for individual commodities or services that are inconsistent or unrealistic when compared to other prices in the same or other bids, may be rejected if such action would be in the best interest of the State. Bidders must, upon request of the MDE, furnish satisfactory evidence of their ability to furnish products or services in accordance with the terms and conditions of these specifications. The MDE reserves the right to make the final determination as to the bidder's ability. The MDE will award all items to one vendor or multiple vendors based on the commodities listed. **Award Criteria:** The award will be made to the best bid. Factors to be considered in determining the best bid include:

- a)Bottom Line Figure
- b)Conformity with Specifications
- c)Responsibility of the Bidder

## 73. AWARD PROCESS

**Bidders must bid on all items listed for each region bidding upon. Failure to do so shall be cause for rejection of bid.** Awarding will be accomplished by multiplying the usage figure times the price bid for each item to arrive at an item cost. For items that do not indicate any usage, a usage quantity of one hundred (100) will be used when calculating the item cost. The item costs for all items will be summed to arrive at a bottom-line figure. The award will be made to the lowest bottom-line figure.

## 74. NOTICE OF AWARD

Upon completion of the bid evaluation process, the MDE OCN will distribute a Notice of Award through the MDE website. Upon receipt of this notification, the vendor should review the Bid Award and notify the OCN of any errors by a specified date. The specified date will be considered to be the "evaluation review deadline." Vendors who claim to have made an error on their bid and can provide adequate documentation to substantiate the claim may withdraw the bid without penalty anytime on or before the evaluation review deadline. Any vendor who withdraws a bid after the evaluation review deadline may be disqualified from bidding for a period of 24 months. Any intent to withdraw must be made in writing.

## 75. CONTRACT ADMINISTRATION

Contract Compliance. All bidders should note that the awarded vendor will be expected to meet all specifications of this bid. As per the General Conditions, any failure to perform is cause for cancellation of a bid contract. The contract will be monitored closely to ensure vendor compliance. If problems occur, they will be reviewed and discussed with the vendor and the vendor will be expected to rectify all problems promptly. Once the OCN has received five (5) written, substantiated, and verified complaints on an awarded vendor regarding noncompliance of any of the contract terms and conditions, that vendor's contract will be canceled, and that vendor will be disqualified from bidding for a period of 24 months.

Questions or problems arising from bid procedures or subsequent order and delivery procedures should be directed to the OCN, Director of Purchasing and Food Distribution, Steven Webb, by email at [swebb@mdek12.org](mailto:swebb@mdek12.org) or directly by phone at 601-576-4960.

**76. ESTIMATED USAGE:**

The estimated usage provided for the items on the bid information sheets is based on previous purchases from January 1, 2025 - December 31, 2025. Bidders understand and agree that the estimated usage indicated for an item does not constitute a guarantee to purchase any amount in excess of requirements.

**77. ADDITIONS / DELETIONS / CHANGES**

The MDE reserves the right to add or delete items and to make changes that are within the original scope of the contract during the term of the contract. This will specifically include the addition/deletion of new or different precut items and/or packaging that may come onto the market subsequent to bid award but within the scope of the initial contract. In addition, the MDE reserves the right to change products from category to category (i.e. whole to precut categories and vice versa).

**78. ADDITIONAL ITEMS**

The specific items included in this contract are those that are used on a frequent basis and in sufficient quantities to justify an ongoing contract. There are other products which are used on an irregular basis and in limited quantities that may be required on an infrequent basis.

In order for participating organizations to purchase these items in a contractual manner, we have developed a process to establish the price and fees for such items based on product costs.

The successful distributors will furnish and deliver the product covered by this category and will be reimbursed on the basis of cost plus a fixed fee as set forth in the chart below. Any rebates or other incentives earned by the distributor and applicable to any item included in this category may be passed on to the user but shall not be considered for audit purposes.

The fixed fee for any item not in the proposal shall be:

Cost Per Unit	Fee per unit (case)
\$ 15.00 -- Or Less	\$ 1.50
\$ 15.01 -- \$ 20.00	\$ 2.00
\$ 20.01 -- \$ 25.00	\$ 2.50
\$ 25.01 -- \$ 30.00	\$ 3.00
\$ 30.01 -- \$ 35.00	\$ 3.50
\$ 35.01 -- \$ 40.00	\$ 4.00
\$ 40.01 -- \$ 45.00	\$ 4.50
\$ 45.01 -- \$ 50.00	\$ 5.00
\$ 50.01 -- \$ 55.00	\$ 5.50
\$ 55.01 -- \$ 60.00	\$ 6.00
\$ 60.01 -- \$ 65.00	\$ 6.50
\$ 65.01 -- \$ 70.00	\$ 7.00
\$ 70.01 -- \$ 75.00	\$ 7.50
\$ 75.01 -- \$ 80.00	\$ 8.00
\$ 80.01 -- Over	\$ 8.50

Organizations should notify the contractor at least two (2) weeks in advance of delivery of noncontract items covered above.

#### **79. BREAKAGE FEE**

Orders will be transmitted to distributors via the on-line ordering system by item number and bid unit pack size as identified in paragraph **90. TRANSMITTAL OF ORDERS**. For example, **Item 4012**, Green Salad Mix, will transmit as a case of 4/5 lb. bags. However, there may be smaller organizations that cannot utilize a full case of product. If a request is made by an organization to the distributor to break a case and ship an item by individual bags, the distributor may charge that organization a fee to break the case. The maximum fee that a distributor may charge for this service is \$1.00 per bag. **However, if the bid unit for that item at bid is "per bag" the breakage fee will not apply. Any handling will have to be factored into the fixed fee and remain constant for the life of the contract.**

#### **80. SERVICE LEVEL**

The contractor shall fill all original orders at a monthly average of 99% or above. Service level achievement shall be for contract items and does not include items covered under paragraph **74. ADDITIONAL ITEMS**.

#### **81. BIDS BASED ON STATE SPECIFICATIONS**

Bidders must bid on items listed in the Items Specifications listing in the MAPS System. Where specific pack size and/or quality levels or specifics, i.e., U.S. No. 1, bids offered on any other specified product will not be considered. See Items Specifications Report attachment.

#### **82. ALTERNATE BIDS**

Alternate bids will not be considered unless specifically requested in the specifications.

#### **83. UNIT PRICE**

Each item is to be priced separately by offering the standard unit price per bid unit designation indicated in each Item Specification Report.

#### **84. FIRM FIXED FEE**

The fixed fee will remain constant throughout the duration of the contract. However, any change to a different pack size that is approved by MDE will result in a corresponding adjustment to the fixed fee. For example, the distributor's fixed fee was based on a 25# box of tomatoes and the pack size changes to a 20# box, then the fee will be adjusted accordingly. The term fixed fee as used in this document shall mean the amount the distributor will be paid for receiving, storing, and delivering the items covered by the contract. All freight charges incurred in the delivery to the user entity as well as markup or profit shall be recovered in the fixed fee bid by the distributor.

#### **85. UNIT COST**

On **Friday June 19, 2026**, awarded bidders must submit current unit costs (unit cost includes all freight, pallet, and any other charges for each item identified in paragraph **103. BID SUBMISSION FORMS**) MDE understands that due to the unpredictable nature of the produce industry, it is not practical to maintain a set cost for produce items over a long period of time. Therefore, prices may be adjusted on a monthly basis. Monthly price changes must be submitted to MDE no later than 12:00 pm noon, **10 days prior to the first Monday of the following month**. Prices will become effective the first Monday of each month.

If an event or events should occur that, through no fault of the contractor, would cause an unusual escalation it would be unreasonable to wait until the next scheduled time for a price change, MDE will listen to a request for price adjustments at that time. In the event that there is an unusual, uncustomary drop in the market price of any item or items covered by the contract, MDE will request a voluntary reduction in pricing by the contractor. The term cost is defined as suppliers invoice price of product delivered to the distributor's warehouse, **less any discounts, rebates, and other applicable credits**. **Unit costs must include all incoming freight, pallet charges, and all other pricing considerations.**

#### **86. PAYMENT TERM DISCOUNTS**

Payment term discounts are not required and will not be used in the award process.

#### **87. PROMOTIONAL ALLOWANCES and VOLUME INCENTIVES**

Promotional allowances and volume incentives will not be an award criterion.

#### **88. FREIGHT**

A separate freight factor is not requested.

#### **89. PACKAGING**

Contracted distributors and any manufacturer, producer or supplier of products under an award from this solicitation shall adhere to the regulations found in 21 CFR 112 Subchapter B –Standards for the Growing, Harvesting, Packing, and Holding of Produce Food for Human Consumption.

#### **90. TRANSMITTAL OF ORDERS**

The order-entry procedure will require that distributors provide automated receiving capabilities that shall necessitate the utilization of a software package capable of receiving information from MDE. Member organizations will place their orders through the MAPS web site via the internet. Distributors will retrieve submitted orders via text file from the MAPS web site. The distributor will compare this submitted requisition text file and compare it against their ability to deliver. The distributor will then modify this text file for product availability and upload the modified text file to the MAPS web site. Distributors shall have the capability to receive multiple files containing produce orders via the internet after the order cut off time of 11:00 a.m. Distributors shall have the capability to check each order, note shortages, and transmit shortage data, if applicable, back to the member organizations on their receiving report via the internet within 24 hours. Also, the distributors shall have ordering capability for organizations to order items that have been identified as short or out.

MDE will provide detailed requirements for the automated order entry system. MDE systems personnel will coordinate this information with all prospective bidders.

In case of a system malfunction, the MDE and ordering entities will submit requisitions to distributors by use of phone, fax, or email.

#### **91. PRODUCE DELIVERIES**

All produce shall be transported in refrigerated vehicles. All produce products are to be delivered in equipment appropriate to the item. Pre-cuts and other refrigerated produce items should be delivered at temperatures from 34 -40 degrees. Other items such as bananas and tomatoes need to be delivered close to 60 degrees. This may be accomplished with two compartment refrigerated trucks (refrigerated and dry section) If the distributor does not have two compartment refrigerated trucks, the distributor must establish with MDE how they will maintain produce temperatures. This method will be approved by MDE prior to bid award.

Based on negotiation between the Distributor and MDE, each organization and site will be assigned a specific order day and delivery day with a minimum of one delivery to each site weekly. Once determined, this will remain constant. Changes may be made to accommodate holidays, etc., but only with MDE approval. Summer schedules will be subject to change based on scope of operation.

**Deliveries to member organizations will be made Monday through Friday** between the hours of 6:30 a.m. and 2:30 p.m.. No deliveries may be made outside operating hours which would result in product not being properly receipted for. Any product delivered without a signed delivery ticket by an authorized representative will be done **SOLELY** at the risk of the deliverer. Unattended delivery of products to member organizations is not acceptable. Vendor drivers and helpers shall deliver merchandise to designated storage areas. Drivers or helpers shall not be required to stow merchandise on shelves nor stack in reach-in coolers or to rotate stock.

All requisition orders will be placed seven days in advance of delivery. Example: Produce to be delivered on Tuesday will be ordered on the prior Tuesday. Produce will need to be in inventory or sourced to meet this schedule. If produce is not available due to market conditions, notification must be made to MDE and member organizations to allow time for the member organization to select a substitute item. Substitutions by the Distributors, including item, variety, pack, quality, or price, must be approved by MDE in advance.

## 92. ORDER FREQUENCY

Each participating organization will be entitled to a minimum of one delivery per week at each designated delivery site. For school district this is normally ten months each year with vacation periods at major holidays and parts of June, July, and August. Some organizations do operate throughout the summer, but both the product mix and volume will be reduced substantially.

## 93. MARKET CONDITIONS

***Due to the seasonal nature of some produce items and its effect on availability, quality, and costs, the MDE reserves the right to add and/or delete items based on market conditions.*** We expect distributors to communicate these conditions to us promptly and assist in planning for and implementing strategies to address such conditions. **No product changes may be made without the expressed written approval of the MDE OCN.**

## 94. PRODUCT CONDITIONS

All precut produce shall have a "pack" date or "use by" date to ensure freshness. This date must appear on the exterior of the case as well as individual packages. This date will indicate Month and Day, or Date such as: 01/16, Jan. 16 etc. **Unless otherwise specified, precuts must arrive at the school site with a minimum of seven (7) calendar days of shelf life remaining. Products that arrive without at least seven (7) calendar days of shelf life remaining may be rejected by the school and the distributor shall be responsible for redelivery within 24 hours. Pre-sliced apples (Item 4217) must arrive with a minimum of 10 days shelf life remaining.**

Raw product must be fresh and comply with the USDA grades and conditions as cited by the USDA (<https://www.ams.usda.gov/>) and the Blue Book ([producebluebook.com](http://producebluebook.com)). Distressed Product is not acceptable. We may have USDA regrade product on a random basis and for cause to ensure the quality level. These re-inspections will occur at participating organizations, as well as the Distributor's Warehouse.

Under grade or distressed product will be returned to the Distributor. In these confirmed cases, the Distributor will be required, at the discretion of the school district, to deliver the correct product within 24 hours of notification.

Contract distributors agree to the consent for inspection and inventory by the MDE, the USDA or any of their duly authorized representatives. If sanitary conditions are found by the MDE to be unsatisfactory, the contract shall be subject to cancellation.

## 95. AUDITS

MDE personnel shall have the right to audit distributor reports relative to any transaction conducted under the provisions of the contract established pursuant to this Invitation for Bids.

**95.1** Audits may be made of a contractor(s) cost records as follows:

- Prior to contract award on items supported by 3<sup>rd</sup> party invoice
- In response to any request for price increase
- At any time that price reviews indicate discrepancies

**95.2** The contractor shall provide acceptable documentation as follows:

- Supplier invoices
- Freight bills
- Inventory records
- Market bulletins – used for distributor manufactured items and inner-company billing items when price changes are requested.

**95.3** Recurring or excessive pricing errors shall be reason for contract termination.

## 96. SANITATION

In addition to the provisions indicated in paragraph **94. PRODUCT CONDITIONS**, contract distributors agree to maintain produce storage facilities and transportation equipment in a sanitary condition, as well as maintain security to prevent unauthorized access to produce that will be consumed in Child Nutrition programs. Contract distributors agree to the consent for unannounced inspections during working hours by the State Agency (MDE), the USDA or any of their duly authorized representatives.

All contracted distributors must develop and exercise a Food Safety Plan based on traditional hazard analysis and critical control point (HAACCP) principles.

Contracted distributors in the State of Mississippi must maintain a nonexpired "Food Warehouse" Facility certificate from the State Department of Health.

Products shipped from warehouses outside the State of Mississippi shall meet or exceed the standards of the State of Mississippi."

#### **97. PRODUCT LOSS and DAMAGE**

The distributor will retain liability of product until such time as the local organization receipts for the product. Local organizations are then responsible for loss through damage and or mishandling. Participant organizations will conduct a thorough inspection of all items delivered prior to receipt. To determine quality of some items, it may be necessary to select an item and slice it open for inspection. Removing items from packaging to determine hidden damage shall be allowed. Any damage, spoilage or other defects observed during receipt inspection that reveal the product to unsatisfactory for receipt will be denied and indicated on the delivery invoice by the receiving organization. The distributor shall accept the denial of receipt of such items. Product determined to be out-of-condition with or without evidence of damage or mishandling shall rest with the distributor.

#### **98. PAYMENT TERMS**

Each member organization is responsible for timely payment of their account based on invoices from the Distributor. All payments must be made within 45 days after receipt of goods and correct invoice. Distributor should notify MDE of any delinquencies. If a recipient agency falls more than sixty (60) days in arrears in payments, a distributor may suspend issues. However, the distributor must notify the MDE no less than 10 working days prior to initiating a suspension of deliveries.

## **The Mississippi Department of Education Produce PRODUCT REQUIREMENTS**

#### **99. PRODUCT PROTECTION GUARANTEES**

Participating Organizations have "automatic" product protection recourse against suppliers for product safety. According to federal regulations, the supplier whose name and address appear on the package is the responsible party. Contractors are expected to take immediate action to correct any situation in which product integrity is violated.

#### **100. NON-DOMESTIC PRODUCTS**

The Buy American Provision of the National School Lunch Act requires that whenever possible and practicable we purchase and use only domestic products. There are exceptions for products not produced in the U.S., such as bananas. In some cases, the supply and cost will be seasonal, and we may opt not to purchase the item during these periods. **Any changes to this provision must be approved by MDE.**

#### **101. BRAND "QUOTING ON"**

Not applicable to this bid.

#### **102. HARVEST of the MONTH PRODUCTS**

MDE is asking that one item per month be purchased that is not normally on the list of contract items. This item may be offered because of the limited growing season or season availability. Items such as Mangoes, Mandarins, Pineapple, Spaghetti Squash, Collards, etc. are examples to name a few. Distributor selection for the Harvest of the Month will be forwarded to MDE for approval and addition to the order guide. Fees for delivery will be determined by the guidance indicated in paragraph 78.ADDITIONAL ITEMS.

#### **103. UNITS OF PURCHASE**

The Unit of Purchase is specified on the Bid Submission Form. We are aware that the Purchase Unit may vary during the duration of this contract as a result of market conditions and seasonal variations. Any proposed change must be submitted to and approved by the MDE in advance of the change.

**The Mississippi Department of Education  
Produce  
BID INSTRUCTIONS**

**104. INVITATION FOR BID**

The bid package consists of the following:

a) INVITATION FOR BID	Page	2
b) GENERAL CONDITIONS	Page	3 - 15
c) SPECIAL CONDITIONS	Page	16 – 21
d) PRODUCT REQUIREMENTS	Page	21
e) BID INSTRUCTIONS	Page	22 - 24
f) TENTATIVE TIMELINE	Page	25
g) BID ITEM SUBMISSION FORMS	Excel Attachment	
h) ORGANIZATIONS and SITES	PDF Attachment	
i) REGIONAL MAP	PDF Attachment	

**105. BID SUBMISSION FORMS**

These forms indicate the following:

- Item number - Four-digit number assigned by MDE.
- Product Name - Nomenclature name of item assigned by MDE.
- Item Description - Written specifications that the product must achieve.
- Region - This column will indicate the regions that bids are requested.
- Bid Unit - All bid units are indicated in the Item Description.
- Fixed Fee - Bidders will enter pricing in this area only for the regions they wish to compete for an award..
- Net Bid - Generated from Fixed Fee bid entered
- Estimated Usage - The volume delivered to regional organizations between 1/1/2025 thru 12/31/2026
- Extended Total - This is bidders submitted total pricing for an item for a specified region.
- Bid Submission Summary – This is the bidders total submitted bid for regions they wish to compete for an award.

**106. BID PRICING ENTRY**

Bid pricing will be entered into the provided Microsoft Excel spreadsheet which will automatically calculate net pricing for all items and regions. Bidders will enter only the regional fixed fee for each item in the bidder spreadsheet form. No other pricing submission is requested or required. It is vital that pricing is submitted for all forty-one (41) items for each of the regions competing for.

## 107. BID DOCUMENTS

Bidders should print the bid submission forms and review them carefully for correctness. If errors are noted by the bidder, edits may be made to the affected item prior to submission. When the bidder is satisfied that all bid pricing entries are complete and correct, then the bid submission forms are ready to be submitted. **Once the bid is submitted to the MDE, the ability to edit the bid is no longer available.** All printed bid submission forms must be enclosed in a sealed envelope with an original signature.

### TENTATIVE TIMELINE

<b>Start Date</b> <ul style="list-style-type: none"><li>• <b>First Date of Advertisement</b></li><li>• <b>Second Date of Advertisement</b></li></ul>	<b>March 9, 2026</b>  <b>March 16, 2026</b>
<b>Pre-Bid Conference:</b> <b>500 Greymont Ave., Suite F, Jackson MS 39205</b>	<b>March 30, 2026, 10:30 a.m.</b>
<b>Deadline for Submission of Questions</b>	<b>April 8, 2026 by 5:00 p.m.</b>
<b>Answers posted to the Website</b>	<b>April 14, 2026 by 5:00 p.m.</b>
<b>Bidder submission location, deadline date, and time:</b> <b>500 Greymont Ave., Suite F Jackson, MS 39205</b>	<b>April 30, 2026, 9:00 a.m.</b>
<b>Public Opening location, date and time</b> <b>500 Greymont Ave., Suite F Jackson, MS 39205</b>	<b>April 30, 2026, 10:30 a.m.</b>
<b>Bid evaluations</b>	<b>May 1-15, 2026</b>
<b>Contract Intent to Award</b>	<b>May 18, 2026</b>