

INVITATION FOR BIDS



Food Distribution

**The Mississippi Department of Education
Office of Child Nutrition
#25-2150-P001**

Submission Due Date: April 17, 2025 at 9:00 AM

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 BIDS

IFB Bid Number: #25-2150-P001	Bid Title: Food Distribution
Dates of Advertisements: 1 st advertisement – March 3, 2025 2 nd advertisement – March 10, 2025	Office of Child Nutrition: Attn: Steven Webb, Purchasing Director Pre-Bid Conference – March 17, 2025, at 9:00 a.m.
Bid Submission Due Date and Time: Thursday, April 17, 2025, at 9:00 a.m. Bid Opening Date and Time: Thursday, April 17, 2025, at 10:00 a.m.	Deadline for Questions: March 19, 2025, at 5:00 p.m.
Bid Review: April 18-24, 2025	Date to Post Answers: March 21, 2025
Contract Intent to Award: April 25, 2025 Term of Contract: July 1, 2025 - June 30, 2028	

You are invited to participate in this Invitation for Bids (IFB). Please submit your bid response in conformance with the instructions specified herein. By submitting a bid response, the bidder agrees and promises to sell, furnish, 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 and by issuance of a contract, constitutes a binding contract made and entered into by and between the Mississippi State Department of Education through the Purchasing Director named above, and the bidder named below:

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

The Mississippi Department of Education
Terms and Conditions
Dry Food and Non-Food Distribution

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).

Shipped to:	The Mississippi Department of Education Office of Child Nutrition Dry Food and Non-Food Distribution, April 17, 2025 ATTN: Steven Webb 500 Greymont Ave. Suite F P.O. Box 771 Jackson, MS 39205 (DO NOT OPEN)
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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 unanticipated delays – whether delivered by shipping or electronic method – is entirely on 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 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 17, 2025, will not be accepted. The MDE will not be responsible for delivery delays of lost packets. All risk of late arrivals due to unanticipated delays – whether delivered by shipping or electronic method – is entirely on the bidder.

All bid pricing must be entered and submitted through the Mississippi Department of Education (MDE) Office of Child Nutrition's (OCN) Automated Food Purchasing System (APS) website. All bid pricing must be entered and bid summary pages, with submitted bid pricing, must be generated and printed from the APS system.

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 attention of the Office of Child Nutrition at swebb@mdek12.org by March 19, 2025, at 5:00 p.m. (CST). Responses will be posted to the MDE website at www.mdek12.org under the MDE Bid Announcements and will be available to the general public by March 21, 2025. A copy of any corrections, changes or clarification to the bid shall be submitted to Steven Webb, Office of Child Nutrition, The Mississippi Department of Education, P. O. Box 771, Jackson, MS 39205. (Physical building zip code is 39202.)

5. ACKNOWLEDGMENT OF ADMENDMENTS

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 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. 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 bidder who signed the original document prior to the time and date of the bid opening. Any received withdrawn bid shall become the property of the MDE. In accordance with §25-61-1, only opened bids shall be available for inspection by participants.

9. FIRM BID PRICE

The Mississippi Department of Education (MDE) is requesting firm Unit Cost pricing and Freight Cost pricing for six months beginning July 1, 2025, through December 31, 2025. Fixed fee costs shall remain firm for the three (3) year contract period.

10. AWARD

It is the intent of the MDE to award a contract to the lowest responsive bidder meeting specifications beginning July 1, 2025, through June 30, 2028. The contract will be awarded for three (3) years. 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. 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 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 number **94. RESPONSIBLE BIDDER.**

11. PRE-BID CONFERENCE

A Pre-Bid conference is scheduled for March 17, 2025, at 9:00 a.m. at the Mississippi Department of Education Office of Child Nutrition, 500 Greymont Ave Suite F, Jackson MS 39202.

While attendance to 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. APS website bid entry training will also be conducted at this time.

12. 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 April 17, 2025, at 10:00 a.m. at the Mississippi Department of Education Office of Child Nutrition, 500 Greymont Ave Suite F, Jackson MS 39202.

13. 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.

13.1 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 intent to 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.

13.2 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: 25-2150-P001
P. O. Box 771
Jackson, MS 39205

13.3 Protest Decision

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

BID Name: FOOD DISTRIBUTION

- a) state the reason for the action taken; and
- b) inform the protestant of its right to administrative review.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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 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 through the contract term. Substitutions are not permitted without written approval of the MDE Project Manager.

25. 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.

26. 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.

27. 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.

28. 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.*

29. 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.

30. 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:

1.
 - 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.

31. 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.

33. 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. 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.

34. INDEPENDENT CONTRACTOR

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.

35. INDEPENDENT PRICE DETERMINATION

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

36. 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.

37. 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. 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.

38. MODIFICATION OR RENEGOTIATION

BID Name: FOOD DISTRIBUTION

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.

39. 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.

40. ORAL STATEMENTS

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

41. PRICE ADJUSTMENT

(1) **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.

42. 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.

43. 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.

44. 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.

45. 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.

46. 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.

47. 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.

48. TERMINATION FOR DEFAULT

Default. If 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. Contractor shall continue 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.

49. 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.

50. 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.

51. 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.

52. 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.

53. 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.

54. TAXES

Purchases made under 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 to 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.

55. 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.

56. 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.

57. 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.*

BID Name: FOOD DISTRIBUTION

58. 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.

59. 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.

60. 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 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 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.

61. 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.

62. 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.

63. 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.

64. 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.

65. NON-DISCRIMINATION CLAUSE

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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.

66. 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.

67. 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.

68. 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

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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.

69. 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 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.

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 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 (IFB) is to establish a contract or contracts between the Mississippi Department of Education (MDE), Office of Child Nutrition (OCN) and full line food service distributors for the pricing, procurement, warehousing and distribution of food items and supplies to participating organizations.

70. TERM

The term of the contract for these commodities shall be for a period of 36 months any increase in price must be in accordance with the Price Adjustment Clause. The effective date is July 1, 2025, thru 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. These renewals/extensions are dependent upon the agreement of the Contractors and shall not exceed (3) months.

71. VOLUME

The total quantity of purchases of any individual commodity of the contract is not known. The usage shown on the bid is from the period of January 1, 2025, through December 31, 2025. The MDE does not guarantee that participating organizations will buy any specified commodity or any total amount. All orders received by Contractor during the term of the contract shall be filled in accordance with the Terms and Conditions as set forth hereinafter.

72. BIDS BASED ON SPECIFICATIONS

Bids are requested on commodities that meet the specifications as listed in the Terms and Conditions.

73. PRICE ADJUSTMENT

It is understood that, with some categories of food, firm pricing for extended periods may not be realistic. Therefore, contracted distributors will be permitted to apply for price changes no more than five (5) times during the term of the contract. Written requests must be received by the MDE no later than December 10th and June 10th of each year during the term of the contract. The approved increase will become effective January 1st and July 1st. All requests for price increases are subject to negotiation and must be substantiated by product cost figures applicable to the pricing for the original bid and to the increase being requested. Justification for such a request must be documented by appropriate third-party market reports

(i.e. Consumer Price Index, USDA Agricultural Marketing Services reports and/or Food Institute Reports to name a few).
Price increases will not be allowed during the first six (6) months of the contract.

If an event or events should occur that, through no fault of the contractor, would cause an unusual, unseasonable escalation, it would be unreasonable to wait until the next scheduled time for a price change, MDE will entertain a request for price adjustment at a time other than set forth above. Any request for a price increase is subject to a negotiation and will be approved or disapproved on the basis of supplier invoicing/quotes as well as data provided in the Food Institute Report and/or other third party market sources

In the event there is an 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. Should the contractor refuse, MDE reserves the right to enter into price negotiation with the other suppliers, provided however, that no agreement will be made with an alternate supplier that does not provide a price lower than the price provided by the contract with the primary supplier, and the reduction must be commensurate with the reduction in the market price.

74. FREIGHT F.O.B. DESTINATION

All quotations shall be F.O B. destination. The term F.O.B. destination shall mean delivered and unloaded onto the receiving dock or room address of the contracted distributor with all charges for transportation and unloading paid by the Contractor.

MDE recognizes that there could be instances where in-bound freight costs would need to be broken out as a separate line item. Except during semi-annual price adjustments, the following guidelines will govern the application, computation, and escalation/de-escalation of in-bound freight costs:

Items designated as Group "A", because they are priced through a contract between a manufacturer and MDE and because that is a delivered price, will not be subject to any inbound freight cost to the distributor and such freight cost will not be a part of the fixed fee. Fixed fee cost for Group "A" items shall be firm for the duration of this contract except as may be otherwise provided for elsewhere in this document.

Bidders are requested to ascertain the in-bound freight cost per each stocking unit (i.e. case, box, bag, etc.) of the items in Group "B" and "C" of this IFB. The in-bound freight per stocking unit will then be reduced to the in-bound freight cost per bid unit. The term "stocking unit" or purchase unit shall also mean case price.

75. SERVICE LEVEL

Contracted distributors shall fill all orders for products specified under the terms of the contract at a fill rate of 98% or above. Recurring shortages and/or back orders may be cause for termination of the contract. Contracted distributors must maintain sufficient working capital to ensure credit worthiness, and timely manufacturer payments. Continued poor service level due to failure to maintain sufficient capital resources or credit with vendors shall be grounds for cancellation.

76. PACKAGING

All packaging shall conform to the current standards acceptable to the trade and required by Interstate Commerce Commission (ICC) regulations.

77. DISCRIMINATION

The bidder 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, or any other such discrimination; and the bidder, by submitting this bid, agrees during the term of the contract that the bidder will strictly adhere to this policy in its employment practices and provision of products or services.

78. MINORITY VENDOR STATUS

Bidders should indicate if they or any of their distributors they list are considered Minority Vendors. Minority Vendor means a business concern that (1) is at least 51% minority-owned by one or more individuals, or minority business enterprises that are both socially and economically disadvantaged, and (2) have its management and daily business controlled by one or more such individuals as ascribed under the Minority Business Enterprise Act 57-69 and the Small Business Act 15 USCS, Section 637(a). **MINORITY** as used in this provision means a person who is a citizen or lawful permanent resident of the United States and who is: Black Americans-racial groups of Africa; Hispanic Americans-of Mexican, Puerto Rican, Cuban, Central/South America, Spanish or Portuguese culture or origin; Native Americans-origin in any of the original peoples of North America; Asian Pacific Americans-origins of the Far East, Southeast Asia, the Indian subcontinent; or a woman.

79. REPORTS

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

80. 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

81. AWARD PROCESS

Bidders must bid 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.

82. 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.

83. 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. 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, swebb@mdek12.org 500 Greymont Avenue Suite F, P.O. Box 771, Jackson. MS 39205; Phone: 601-576-4960.

84. BID TABULATION REVIEW

All vendors are invited and encouraged to attend the bid opening meeting to review the submitted bids. After the close of the bid opening meeting, the bids will be considered to be in the evaluation process and will not be available for review by vendors. Upon completion of the evaluation process, the MDE will notify the vendor(s) who have submitted the apparent low bid(s) meeting specifications.

Vendors may request copies of bid tabulations and evaluations pursuant to the Public Records Act 25-61 et. Seq., MS Code of 1972.

Bid Review Schedule. Unless otherwise indicated, the following bid review schedule will be adhered to. Any protest or questions concerning the evaluation or award must be received in writing by the MDE, OCN Steven Webb swebb@mdek12.org on or before the evaluation review deadline.

- a) Public Bid Opening: April 17, 2025, at 10:00 a.m.
- b) Evaluation Process: April 18-24, 2025
- c) Distribution of Apparent Award: April 25, 2025
- d) Effective Date: July 1, 2025

This Schedule may be revised to later dates if situations warrant such revisions. Any vendor wishing to be advised of such revision, should submit a letter with their bid which indicates this desire. If there is a conflict between the information in the Conditions and the Instructions and Special Conditions, the information in the Instructions and Special Conditions takes precedence.

85. BIDDER REQUIREMENTS

Bidders responding to this IFB shall be established vendors regularly engaged in the business of purchasing, warehousing and distribution of the requested food items, with at least five (5) years of successful experience in the business. Bidders must, upon request of the State, furnish satisfactory evidence of their ability to furnish products or services in accordance with the terms and conditions of these specifications. This may also include the bidder's financial statement, proof of access to capital and professional references. The MDE reserve the right to make the final determination as to the bidder's ability. Failure to meet the minimum requirements shall result in bid being disqualified.

86. BIDDER RESPONSIBILITY

It shall be incumbent upon each bidder to understand the provisions of this bid document and, when necessary, obtain clarifications prior to the time and date listed in section 2.5. Failure to obtain a clarification will be no excuse or justification for non-compliance with the provisions set forth herein.

87. QUESTIONS FOR CLARIFICATION

Written questions concerning the bid shall be submitted to Steven Webb at swebb@mdek12.org. Questions for Mr. Webb must be submitted no later than March 19, 2025, at 5:00 p.m. Answers will be transmitted via email to all bidders no later than 3 working days from receipt of questions. Copies of all questions submitted, and responses will be posted to MDE's website at www.mdek12.org under Public Notices.

88. CORRECTIONS

All edits or corrections must be made in the Automated Food Purchasing System (APS) prior to submission. All subsequent corrections must be made in writing on the bid response page(s). The use of a single line out with the initial of person signing bid will edit unwanted response, and the corrected response will be indicated in its place in ink.

89. DIRECT TO MANUFACTURER PRICING

Items designated herein as "Direct to Manufacturer" or Group "A" are priced through a contract established between MDE and a manufacturer. The awarded distributor will purchase these items from the designated manufacturer and will be reimbursed on the basis of the price set by the MDE Manufacturer contract. The distributor shall purchase the exact item from the designated manufacturer. To deviate in either case shall be cause for cancellation of the distributor contract.

Shipments of Group A products must be received and unloaded at the distributor's warehouse. No slotting fees, unloading fees, or lumper fees may be added to the manufacturer's cost. Costs of receiving and unloading Group A products may only be recovered through the fixed fees charged participants for each of these items.

90. BID PRICING WEBSITE

Each item will be priced separately in the APS online system. Payment term discounts will not be considered. All items for each Region for which the bidder plans to submit a bid must be priced. The APS system will not accept a bid unless all items have pricing.

91. BRAND IDENTIFICATION

Offering a bid on a brand which was not pre-approved shall be reason for rejection. Failure to specify the brand being offered, when applicable, may be considered grounds for rejection. The vendor will be given the opportunity to provide this information. Information shall be provided within 24 hours of request. Failure to comply with the time limit established may be cause for rejection of the proposal.

92. LIABILITY

Subsequent to the awarding of a contract, the contractor will be liable for any expense, including legal fees, incurred by MDE, any school district, or any other qualified entity as a result of violations of the contract terms by any contractor.

93. SUBMISSION OF BID

Bids shall be submitted in compliance with the following criteria:

- a. Bid pricing must be entered electronically in the APS website.
- b. Bid pricing documents must be generated from the APS website.
- c. Bid pricing documents must be signed and original submitted.
- d. USDA Donated Foods bids will be submitted in the provided MS Excel spreadsheet.
- e. APS website bidding will be completed as instructed in the provided APS Bidder User Manual.
- f. The username and password (unique to each bidder) are included in the provided bid cover letter. At the initial log-in the bidder will be prompted to change the password to one of their choosing. Please make note of the username and password and keep them so they can be used throughout the bid process.

Place the following completed and signed forms in a sealed envelope:

- a. Invitation for Bids (page 2)
- b. Bid Summary pages generated from the APS system
- c. Bid Information pages generated from the APS system
- d. USDA Donated Foods Bid Sheets

The bidder's company name, bid opening date, bid opening time and bid number should be entered on the bottom left corner of each sealed envelope. Ensure this envelope is sealed to prevent inadvertent opening. Unsealed envelopes will be considered opened and thus rejected. All sealed envelopes should be placed in a sealed container for delivery to the MDE. It shall not be necessary that any other sections of this IFB document be returned with the bid.

Bids delivered by Federal Express, UPS, or any other such deliverer's envelope shall be sealed in a separate envelope inside the deliverer's packaging. Failure to do this may cause the bid to be inadvertently opened and thus rejected.

Bids sent via regular or express mail must be sent to the Office of Child Nutrition, P.O. Box 771, Jackson, MS 39205. The U.S. Post Office will not physically deliver mail to 500 Greymont Ave, Suite F, Jackson, MS 39202.

Fax bids will not be accepted.

Only bid pricing submitted electronically in APS, USDA Donated Food bid forms furnished with this solicitation, and the signed completed bid summary and bid information pages generated from the APS system will be considered. **Signed bid forms must be original signature.** This bid document must be used without alterations. Bids that do not contain the items listed in this section will be considered incomplete and thus rejected.

94. RESPONSIBLE BIDDER

It is the intent of the MDE to award a contract to the lowest responsible bidder meeting specifications. Awards will be based on the total price of all items as presented on the submitted Bid Summary Pages. 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 Mississippi Board of Education, bids submitted by that bidder will be rejected. The criteria used to determine responsibility shall include, but is not limited to, the following:

a. DELIVERY ABILITY

Bidder must demonstrate, or has demonstrated to MDE, the ability to deliver all the items on the bid list in accordance with Delivery Times and Places section 3.1.10 of this bid.

b. CAPACITY

BID Name: FOOD DISTRIBUTION

Bidder must demonstrate to MDE that they have the physical capacity as well as financial capability to procure and store the merchandise covered by the contract in the volume necessary to efficiently administer the provisions of the contract.

c. RELIABILITY

For a bidder to be declared a responsible vendor they must have a proven record of service in the administration of a contract of this size and this type. A distributor may be considered unreliable thus non-responsible if for any reasons, other than reasons beyond their control, they have violated any of the requirements listed herein or have caused the cancellation of a contract of this type or have failed to properly communicate with participating entities on matters essential to a contract of this type.

d. ACCOUNTING PROCEDURES

A bidder, to be considered for award, must clearly demonstrate to MDE the capability to provide accurate, reliable and timely invoices, statements, and credits. Further, they must demonstrate the ability and capability to provide any and all data necessary to accomplish an accurate and time efficient audit of cost on Group "B" and Group "C" items being purchased under the cost process. (See Product Designation section 5.5) Invoices generated for orders placed on the MDE on-line ordering system (APS) 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.

e. FACILITIES AND EQUIPMENT

Bidder must have the warehouse facilities required to safely and securely store the products required by these specifications. Refrigeration facilities used for storing refrigerated and frozen products must meet recommendations of the Refrigeration Research Council. Delivery temperatures of frozen and refrigerated food shall be in compliance with AFDOS code as recommended by the Federal Food and Drug Administration. The MDE reserves the right to pre-qualify any or all bidders and to reject any bidder not meeting the requirements in the areas of warehouse facilities and equipment associated with and necessary for the safe and sanitary storage and delivery of the food items requested in these specifications. The facilities and operating practices must, at all times, be in compliance with the United States Food, Drug, and Cosmetic Act as well as any State and local Statute, Regulation or Ordinance.

f. DELIVERY EQUIPMENT

Bidders must show evidence of ownership or the ability to lease, rent or otherwise obtain vehicular equipment necessary to affect an efficient day-to-day delivery schedule to participating entities within the bidder's region of responsibility. MDE does not presume to dictate the type of trucks or tractor trucks necessary to accomplish an efficient day-to-day delivery schedule. However, bidders should know that all delivery sites do not provide state-of-the-art unloading and food handling facilities. Some sites, in fact, fall far short of that standard. Some sites will not accommodate trailer rigs and, in fact, are not easily accessible with bob trucks having overall lengths in excess of twenty-seven (27) feet. Bidders having no experience in making deliveries to the sites in the region being bid should visit all sites and discuss the delivery requirements with food service personnel at each of these sites which may prove detrimental to the task of accomplishing an efficient delivery process.

After bids have been opened and tabulated, the bid evaluation team will check all aspects of the low bidder's proposal. If the proposal is found to be error free and does, in fact, represent the lowest responsive, responsible offering, that bid will then be presented to the Chief Accountability Officer with a recommendation for approval to award. If, however, an error is discovered and the error is a mistake in the extension, the correct extension will be applied. Should a corrected extension cause the bid price to be escalated to such an extent that the bid was no longer "low" then the same evaluation would be applied to the next low bidder's offering until a true low bid would be selected.

Each bidder must complete the appropriate sections of the bid form for each region on which a bid is submitted. Although it is unlikely that the state will award a contract for the entire state to one distributor, state officials reserve the right to limit the award on the basis of conditions as stated in this paragraph 94. RESPONSIBLE BIDDER sub paragraphs a. through f. In addition, MDE reserves the right to award regions based on what is clearly in the best interest of recipient agencies and the state.

95. BID INFORMATION

Subject to the requirements of the Mississippi Public Records Act, bid files may be examined by bid participants during normal working hours. Non-participants may have access to the files only after the award has been made. No files will be removed from the MDE offices and department personnel will not make copies nor will copy machines, facsimile machines or other such equipment be made available to the public for the purpose of copying bid documents.

96. SPECIAL PRODUCTS STOCKING AND RECOVERY

BID Name: FOOD DISTRIBUTION

Because of the nature of this contract, distributors may be required to stock items not normally maintained in their inventory. To remove some risk that would be inherent in a contract of this type, distributors may list, on a separate page, those items being stocked specifically for the child nutrition state-wide contract. In the event that a distributor should not be successful in securing the contract for the next contract period, MDE will require that the new contractor purchase the items designated as "special to the contract".

However, such repurchase requirement would apply only to those items that were undamaged and current dated as defined in sections 3.7(d) (damaged item) and 3.7(e) (current label) of this document, and were not in inventory as the result of an unusual order being placed during the period subsequent to the awarding of a new contract and prior to the effective date of that new contract. ***The requirement of repurchase would be void if the contract is terminated by the contractor or is terminated for non-compliance by MDE.*** Provided, however, that nothing would preclude a substitute contractor's purchasing items from the defaulted contractor. Any such transaction would be an agreement between the two parties and not required by MDE. Failure to provide a listing of special stocked items with bid will rule the distributor ineligible for "buy back" provisions. Further, it shall be understood that repurchase of any product covered by this clause shall be at a price that does not exceed the acquisition price paid by the original contractor.

97. DURATION AND TERMINATION

This contract shall be in effect for thirty-six (36) months, with the option to renew for twenty-four (24) months, unless terminated by MDE or the contractor as herein provided.

The Mississippi Department of Education or the Contractor may terminate this agreement for other cause, after giving thirty (30) days' written notice specifying the effective date thereof to the other party. In accordance with 7 CFR 250.12(f)(9), the contract may be terminated for cause by the state or the contractor upon 60 days' written notice.

In accordance with 7 CFR 250.12(f)(8), the contract may be canceled by the state immediately due to noncompliance on the part of the warehouse management. If this contract is terminated for non-compliance by MDE and a rebid is required, the prime contractor who was terminated by MDE will not be permitted to bid. Further, that contractor, by having the contract terminated for non-compliance, shall have forfeited the right to bid on any contract originating from this office for the remaining contract period of the original contract plus an additional contract period or for twenty-four (24) months, whichever is greatest.

In the event of a termination initiated by the contract distributor, the distributor will be required to honor all orders or requisitions issued by organizations prior to the effective date of the termination and received by the distributor within a seven (7) day period subsequent to the effective date of the termination. Any orders covered by this clause will be delivered at a price that does not exceed the price set by the contract. Termination by the State does not relieve the distributor of any liability arising out of a default or non-performance.

In the event of a termination initiated by the contract distributor, the contract may be rebid. If a rebid is required, the prime contractor who initiated the termination will not be permitted to bid.

In the event of a termination initiated by the contract distributor, the procedures as outlined in paragraph **96. Special Products Stocking and Recovery**, will not apply.

The Mississippi Department of Education, by written notice, may terminate this contract, in whole or in part, if funds supporting this contract are reduced or withdrawn.

98. STANDARD CONTRACT CONDITIONS

This contract shall be governed in all aspects as to validity, construction, capacity, and performance or otherwise by the laws of the State and the United States.

Contractors providing service under this invitation for bids, herewith, assures the MDE that they are conforming to the provisions of the Civil Rights Act of 1964 as amended.

Contractors shall comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Labor regulations (41 CFR Part 60).

State Sales and Use Tax Certificate of Exemption form will be issued upon request.

The contractor understands that the State, in accordance with Federal Law and U.S.D.A Policy prohibits discrimination against its customers, employees, and applicants for employment on the bases of race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or if all or part of an individual's income is derived from any public assistance program, or protected genetic information in

employment or in any program or activity conducted or funded by the Department. (Not all prohibited bases will apply to all programs and/or employment activities.)

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, found online http://www.ascr.usda.gov/complaint_filing_cust.html, or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at program.intake@usda.gov." Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339; or (800) 845-6136 (Spanish). USDA is an equal opportunity provider and employer.

The contractor agrees to retain all books, records and other documents relative to this agreement for three (3) years after final payment. The MDE, its authorized agents and/or state/federal representatives shall have full access to, and the right to examine any of said materials during said period. If an investigation or audit is in progress, records shall be maintained until the stated matter is closed.

Any product offered which is not labeled in such a manner as to permit interstate transport will be rejected. Packers and/or producers located within the State of Mississippi must understand that Mississippi Department of Agriculture inspection labels will not qualify under provisions of this Invitation for Bids.

Bidders shall comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7401-7671q), Section 508 of the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), Executive Order 11738 and Environmental Protection Agency regulations, (40 CFR Part 15), which prohibit the use under non-exempt federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities.

All patents and other legal rights in or to inventions created in whole or in part under the contract must be available to the state for royalty-free and non-exclusive licensing. Both parties shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use and authorize others to use, copyrightable properly recreated under the contract.

In the event of any claim by any third part against the purchaser that the products furnished under this contract infringe upon or violate any patent or copyright, the purchaser shall promptly notify the contractor. The contractor shall defend such claim, in the purchaser's name or its own name, as appropriate, but at the contractor's expense. The contractor will indemnify the State against all costs, damages, and attorney's fees that accrue as a result of such claim, if the purchaser reasonable concludes that its interest are not being properly protected, or if principles of governmental or public law are involved, it may enter any action.

If any product furnished is likely to or does become the subject of a claim or infringement of a patent or copyright, then the contractor may, at its option, procure for the purchaser the right to continue using the alleged infringing product, or modify the product so that it becomes non-infringing. If none of the above options can be accomplished, or if the use of such product by the purchaser shall be prevented by injunction, the purchaser will determine if the contract has been breached.

By signing this document, the contractor certifies that this bid is made without prior understanding, agreement or connection with any corporation, firm or person submitting a bid for the same materials, supplies or equipment, and is in all respects fair and without collusion or fraud. The contractor certifies that collusive bidding is a violation of federal law and can result in fines, prison sentences and civil damage awards.

The contract distributor shall be liable for gross receipt taxes in accordance with Mississippi statutes.

The contractor shall perform all services as an independent contractor and shall discharge all of its liabilities as such. No act performed or representation made, whether verbal or written, by the contractor with respect to third parties shall be binding on the Mississippi Department of Education.

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.

Contractors must comply with section 6002 of the Solid Waste Disposal Act Section 6002 which includes procuring items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable.

99. ADDITIONAL ITEM OR "BRACKET"

This section shall cover those food or supply items not specifically listed in Group "A", Group "B" and Group "C" of this document. They are those products that may, for specific functions, be purchased by participating entities.

BID Name: FOOD DISTRIBUTION

The successful distributors will furnish and deliver the product covered by this category and will be reimbursed on the basis of cost plus any applicable in-bound freight plus a fixed fee as set forth in the chart below.

The fixed fee for any item (except catch weight) *not* in the proposal shall be:

Cost Per Unit	Fee Per Unit (Case)
\$ 0.01 -- \$ 15.00	\$ 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 -- \$ 85.00	\$ 8.50
\$ 85.01 -- \$ 90.00	\$ 9.00
\$ 90.01 -- \$ 95.00	\$ 9.50
\$ 95.01 -- \$100.00	\$10.00

The fee of catch weight items not in the proposal shall be:

Cost Per Unit	Fee Per Pound
\$ 0.01 -- \$ 1.00	\$ 0.13
\$ 1.01 -- \$ 1.25	\$ 0.16
\$ 1.26 -- \$ 1.50	\$ 0.19
\$ 1.51 -- \$ 1.75	\$ 0.22
\$ 1.76 -- \$ 2.00	\$ 0.25
\$ 2.01 -- \$ 2.25	\$ 0.28
\$ 2.26 -- \$ 2.50	\$ 0.31
\$ 2.51 -- \$ 2.75	\$ 0.34
\$ 2.76 -- \$ 3.00	\$ 0.37
\$ 3.01 -- \$ 3.25	\$ 0.40
\$ 3.26 -- \$ 3.50	\$ 0.43
\$ 3.50 -- Over	\$ 0.46

Participating entities will notify the contractor at least (2) weeks in advance of delivery items covered by this Section.

100. ADDITIONS / DELETIONS / CHANGES

The MDE reserves the right to add commodities and or Contractors and to make other changes that are within the original scope of the contract during the term of the Contract. Any such additional change, not within the original scope, will be made through the competitive bid process.

During the term of the contract awarded under this solicitation, additional items not included in this solicitation and resulting awarded contract, may become necessary and beneficial to the recipient agencies. The aggregate value of added items by the MDE during each year of the contract, if renewed, shall not exceed 10% of the estimated total of the contract.

The fee associated with any new item (direct from manufacturer or distributor Group A, Group B or Group C) will be calculated using the following method: The distributor's fees for all items in the group (A, B, or C) to which the new item will be added will be totaled and the unit costs for all items in the group to which the new item will be added will be totaled. The totaled fees will then be divided by the totaled unit costs to derive a percentage. This percentage will then be multiplied times unit cost of the new item to determine the fee associated with the new item. For example, if the new item will be added to Dry Food (Group B), and the existing fee percentage for that group was 6%, then 6% would be multiplied times the price of the new item (ex. - \$32.50). The calculation would then be $.06 \times \$32.50 = \1.95 . The fee to be charged by the distributor for the new item would be \$1.95.

101. OTHER AGREEMENTS

Upon the effective date of the contract all other agreements or portions of other agreements held by participating entities which pertain to items covered by the contract shall be void, except as noted in section **99. ADDITIONAL ITEM OR "BRACKET"**.

102. UNIT COST

Unit Cost is the price paid by the distributor to have the item delivered to that distributor's dock (unless in-bound freight is broken out separately). When entering pricing in the APS system, the Unit Cost shall not include any distributor mark-up or anticipated costs to be borne by the distributor. The listed cost must include any deductions for bill-backs, promotional allowances, volume discounts, bid allowances or any other discounts. Comparisons in the unit costs listed will be made between distributors. Significant differences will be noted and questioned. The failure to include allowances or discounts will result in the disqualification of the bid.

103. REGIONS

Bidders will enter pricing for all items by region. There are seven (7) service regions within the state. Bidder may submit pricing for a single region or for multiple regions depending on their scope and ability of service capability. Awards will be made for each region by commodity type (Dry and Non-Foods and Refrigerated/Frozen Foods) and distributor group (Group B and C).

104. FIXED FEE

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 charges incurred in the delivery to the user entity as well as mark up or profit shall be recovered in the "Fixed Fee" bid by the distributor. In-coming freight (to the distributor) and fixed fee costs are to be bid separately in the APS system and will be combined with *unit cost* to arrive at an Extended Total per item. ***The fixed fee shall be firm for the term of the contract.*** Freight fees are subject to change at semi-annual price adjustments or in special circumstances as indicated in paragraph **109.COMPUTING FREIGHT**.

105. DAMAGED ITEM

The term "damaged" for purposes of this document, shall refer to an item that has sustained a damage that would allow spillage from the original container, a loss or disfigurement of a label that would hamper identification, contaminated package that would affect the content of that package or any other happening that would affect the quality and/or quantity of the original item.

106. CURRENT LABEL

Current Label shall refer to a product that can be substantiated as "fresh" by being tied to the code date on the containers. Should the product state a "use before date" that date shall not expire prior to a period within 90 calendar days subsequent to any transaction that would require a "repurchase" by any succeeding contractor. (See paragraph **96. SPECIAL PRODUCTS STOCKING and RECOVERY.**)

Bidders are requested to bid on items meeting the specifications. Where approved brands are specified, bids offered on any other than the approved brands and product code specified will not be considered.

107. UNIT PRICE

Each item is to be priced separately by offering the standard unit price as per bid unit designation in the Item Information section of the APS system. In the event that the unit designation is different than the standard package offered by a bidder, that bidder shall convert the unit cost to conform with the unit set forth in the specifications. [e.g. bid unit is case of 150 pieces. Bidder wishes to bid a case of 300 pieces with the unit case cost of \$20. Bidder would divide the unit cost by 300 ($\$20/300 =$

.0666/piece) and then multiply it by the standard bid unit case count (.0666 X 150 = \$9.99). The unit cost for this item would be \$9.99.] The fixed fee and freight would also be prorated to the bid unit case count. Failure to make the conversions may be cause for rejection. This does not require repackaging to meet bid requirement. Unless otherwise noted, bidders will quote on the pack size specified in the Item Information section of the APS bidding system.

108. FUEL SURCHARGE

When the retail cost of diesel fuel has increased by no less than \$0.30 above the baseline fuel price per gallon (baseline + .30) the distributor may petition the MDE Office of Purchasing and Food Distribution for a \$2.00 surcharge per delivery. (Baseline fuel price will be set as the price per gallon of diesel on the US Department of Energy https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=EMD_EPD2DXL0_PTE_R30_DPG&f=W web site on the date the bid is advertised.) For each additional \$0.30 increase in diesel price, the surcharge may be increased by \$2.00 per delivery site with MDE approval. (See example provided in the chart below.)

No surcharge will be approved for the initial thirty days of the contract. After thirty days distributors may contact MDE and petition for a surcharge as described below. Surcharges may be adjusted on the first day and the fifteenth day of each month.

*Baseline will be set of diesel for the Gulf EIA.gov website on

The MDE OCN Purchasing and Food monitor the price of has been instituted. be reduced based on For each .30 cent be removed from the until the fuel prices Should the price go the fuel surcharge will authorized.

Baseline Fuel Price per Gallon*	Current Price	Surcharge
\$3.382	\$X.00 + .00	\$0.00
	\$X.00 + .30	\$2.00
	\$X.00 + .60	\$4.00
	\$X.00 + .90	\$6.00
	\$X.00 + 1.20	\$8.00
	\$X.00 + 1.50	\$10.00
	\$X.00 + 1.80	\$12.00
	\$X.00 + 2.10	\$14.00
	\$X.00 + 2.40	\$16.00
	\$X.00 + 2.70	\$18.00

as the price per gallon Coast PADD 3 on the February 17, 2025

Division of Distribution will fuel once a surcharge Fuel surcharges shall the same formula. decrease \$2.00 will approved surcharge reach baseline + .30. below baseline + .30, no longer be

Fuel Surcharges will be changed twice each month. In order to avoid changes to invoices in mid-week, the distributors will be notified and the change will be effective on the Monday before the 1st and the 15th of the month (unless the 1st or the 15th falls on a Monday).

109. COMPUTING FREIGHT

MDE recognizes that there could be instances where in-bound freight costs would need to be broken out as a separate line item. Except during semi-annual price adjustments, the following guidelines will govern the application, computation, and escalation/de-escalation of in-bound freight costs.

Items designated as Group "A", because they are priced through a contract between a manufacturer and MDE and because that is a delivered price, will not be subject to any inbound freight cost to the distributor and such freight cost will not be a part of the fixed fee. Fixed fee cost for Group "A" items shall be firm for the duration of this contract except as may be otherwise provided for elsewhere in this document.

Bidders are requested to ascertain the in-bound freight cost per each stocking unit (i.e. case, box, bag, etc.) of the items in Group "B" and "C" of this IFB. The in-bound freight per stocking unit will then be reduced to the in-bound freight cost per bid unit. The term "stocking unit" or purchase unit shall also mean case price. The fixed fee, exclusive of the in-bound freight cost, shall be firm for the initial term of the contract. The in-bound freight costs, except during semi-annual price adjustments, are subject to escalation/de-escalation based on two specific criteria only:

- An increase or decrease in the cost of fuel of more than 30 cents per gallon over a 30-day period.
- Occurrence in the trucking industry that would affect in-bound freight cost and would have an industry wide and nationwide impact.

Request for price escalation must be substantiated with supporting documentation. If an increase is granted on the basis of rising cost of fuel, MDE will likewise expect a decrease in freight cost in the event of a corresponding reduction in the cost of fuel.

To provide a bottom line price for this proposal, bidders must bid the in-bound freight cost and the fixed fee in terms of bid units, i.e., serving, pound, case, etc.

110. DEFINITIONS

- a. Pack Size with some items the bid unit does not represent a package configuration by which the item would normally be purchased. In such instances, you will be required to bid according to the designated bid unit and also to state how the product is packaged and to provide a delivered cost for purchase unit.
- b. Count shall be stated as numbers of pieces, servings, gallons, etc., per purchase unit. In some instances this may not be applicable.
- c. Purchase Unit shall mean the package configuration (i.e., case, carton, box, bag, etc.) by which the product would normally be sold. This shall also mean packaging being referred to when the term "case price" is applicable.
- d. Bid Unit the unit designation which shall be applicable to all pricing offered for bid evaluation purposes. Unit cost, freight, fixed fee, estimated usage and the extended cost shall be stated in terms of the designated bid unit.
- e. Freight per Unit shall be stated as the in-bound freight cost per bid unit based on the freight cost per purchase unit offered by the bidding entity; i.e., should the freight per purchase unit be \$ 1.00 and there are 100 bid units in a purchase unit, the freight per bid unit would be 1 cent each.

111. PACKAGING

All packaging shall conform to current standards acceptable to the trade and required by ICC Regulations.

112. CONTRACT APPLICATION

The terms and conditions set forth in this invitation for bids shall become a contract binding on the successful bidder. Any documents submitted to satisfy the requirement of this invitation and any assurances made by the successful bidder in satisfaction of the Invitation for Bids shall become a part of the agreement between the MDE and the successful bidder. MDE shall have the right to rely upon documents and assurances submitted by the bidder.

113. DELIVERY TIMES AND PLACES

Deliveries shall be required to all awarded sites listed in the provided List of Participant Organizations and Delivery Sites. Frequency of delivery shall be weekly to all ordering sites that submit an order of at **\$400** for dry and non-food items. **Sites that are unable to meet the mandatory minimums are entitled to a minimum of twice monthly orders.** Shorts and outs shall not be used to reduce the dollar amount of a submitted order. (Exceptions to the mandatory minimum requirements may be granted during summer feeding. Distributors should coordinate the delivery of smaller than minimum orders between recipient agency and the Office of Purchasing and Food Distribution.) Deliveries shall be completed between the hours of 6:30 a.m. and 2:30 p.m. Distributors will be accountable for the reimbursement of one (1) employee overtime pay and related fringe benefit costs which results from late delivery. It is agreed that late delivery is delivery arrival after 2:30 p.m., or arrival before 2:30 p.m. but not completed by 2:45 p.m. No delivery shall be required if the participating organization is closed on their delivery day unless agreeable with distributor to change delivery day for that week.

114. RESTOCKING AND RECOVERY

Should a participating organization refuse to receive an item, or items, that was transmitted by that organization to the distributor via the on-line ordering system, and the item appears on the receiving report, the distributor is authorized to charge a restocking and recovery fee of not more than 25% of the total cost of the refused item. Distributors must submit to MDE for prior approval the percentage cost per case that will be charged for restocking and recovery per occurrence to any organizations.

The MDE reserves the right to add or delete recipients to this program during the term of the agreement. The contract distributor also agrees to provide service at the proposed bid price for any new recipient agency that may be approved to receive U S D A donated foods, purchased foods, or non-food within an assigned geographical region.

115. DELIVERY SCHEDULES

Delivery schedules shall be submitted to MDE and participating entities for approval and shall remain constant for the duration of the contract.

Drivers and helpers shall deliver merchandise to designated storage areas (dry, refrigerated and frozen). Drivers or helpers shall not be required to stow merchandise on shelves nor stack in reach-in coolers, freezers, or other cabinets or to rotate stock.

Drivers and helpers shall request the authorized receiver or the designated representative, to verify the accuracy of quantities of each item, brand and code numbers of each item and condition of merchandise. Each delivery ticket shall be signed by a designated receiver. Variations from the delivery ticket, i.e., shortages, damages, etc., shall be noted on each ticket by the designated receiver and initialed by both the truck driver and receiver. The contractor shall not be required to issue credits for errors not detected at the time of delivery, except for hidden damage.

If deliveries are made wherein shortages or damaged items are noted on the invoice, the contractor will be required to make a redelivery not later than the next day to correct the discrepancies. However, if the shortage was noted and transmitted to the affected entity during the order process (on the receiving report), this requirement will not apply. The participating entity may elect to have the merchandise delivered at their next scheduled delivery day.

116. 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. Participating organizations will submit their orders through the APS website via the internet. Distributors will then retrieve these orders via text file from the APS web site. The distributor will pick up this text file and match it against their inventory. The distributor will then modify this text file for product availability and upload the modified text file to the APS website. Distributors shall have the capability to receive multiple files containing food, non-food orders via the internet after the order cut off time of 12:00 p.m. noon. Distributors shall have the capability to check each order, note shortages, and transmit shortage data, if applicable, back to the participating 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.

Distributors shall identify a telephone and email contact within their organization that participating organizations can contact as needed.

Participating organizations have the ability to order USDA commodities through the automated order entry system. Distributors shall have the capability to accommodate this ordering system.

MDE will provide detailed requirements for the automated order entry system (APS). MDE systems personnel will coordinate the information with all prospective bidders. In case of a system malfunction, the MDE and ordering entities will either email, verbally phone in, or fax orders to the distributors.

117. ITEM SUBSTITUTIONS AND OUT OF STOCKS

Distributor will not substitute brands without prior approval of MDE. When the term substitute, as it applies to a food or supply items covered by this contract, is used, it shall mean a switch in category. i.e., a participating entity may request that chicken thighs be substituted for the chicken breasts that were out-of-stock. It shall not mean that different manufacturer's chicken breast could be substituted. Distributors will make no substitution which has not been requested by the ordering entity.

118. PAYMENTS

In accordance with Miss. Code Ann. § 31-7-305, all payments must be made no later than forty five (45) days after receipt of the invoice and receipt, inspection and approval of the goods or services; however, in the event of a bona fide dispute, the public body shall pay only the amount not disputed.

Invoices generated for orders 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. 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.

119. DECIMALS

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

- a. Decimals will be carried two (2) places for per case prices.
- b. Decimals may be carried to four (4) places for bid units less than per case (i.e. per serving, pound, each, bag, etc.).
- c. Decimals carried beyond the two or four places will automatically be rounded back to the two or four places when verifying for bid accuracy.

120. AUDITS

MDE personnel shall have the right to audit distributor records relative to any transaction conducted under the provisions of the contract established pursuant to this IFB. Audits may be made of the contractors cost records as follows:

- a. Prior to contract award on items supported by 3rd party invoice
- b. In response to any request for price increase of either product or freight cost
- c. At any time that price reviews indicate an unexplained fluctuation.

The contractor shall provide acceptable documentation as follows:

- a. Manufacturers invoices
- b. Freight Bills
- c. Inventory Records
- d. Market Bulletins - used for distributor manufactured items and inner company billing items when price changes are requested

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

USDA DONATED FOODS CONDITIONS

The effective date of this contract shall be July 1, 2025, through June 30, 2028. Contracted distributors may be required to receive and warehouse USDA Donated Foods prior to the official start-up date without additional charges to the state or recipient agencies. Contractors may request a sixty-day extension in the final year of this contract to allow for completion of delivery of USDA Donated Food inventories.

121. PRICE

USDA donated food fees shall be quoted on a per-case basis in strict accordance with this solicitation. USDA donated food fees shall apply to dry and refrigerated/frozen items. Fees stated are all inclusive and no other charges shall be assessed.

122. EXTENDED STORAGE

A contracted distributor may charge recipient agencies a fee per month, no greater than 25% of the regional distribution fee per case, for each 30-day period, for allocated products that remain in storage beyond sixty days. A storage charge shall not be assessed for any items in storage less than sixty (60) days.

123. PETITIONS FOR PRICE ESCALATION

Bid prices shall be firm for the contract period (36 months).

124. TRANSFERS

Fees must include four free transfers of products annually on exchangeable pallets between contract distributors. If a distributor has more than one warehouse it shall be eligible for four free transfers per warehouse.

125. INSURANCE

The contract distributor shall provide "All Risk" escalating warehouse contents insurance. The amount of such insurance must be at least equal to the average monthly value of donated food inventories in the previous fiscal year. Evidence of adequate coverage shall be required of the contract distributor upon bid award, each contract renewal date and at the beginning of a fiscal year each July.

126. LICENSES

Distributors may be required by state statutes to have a license to deliver commodities under this program. The responsibility for acquiring and paying for such a license prior to contract award rests with the distributor.

127. CONTRACT TERMINATION

The contract may be canceled with 30 calendar days written notice by the contractor with consent of the state. The contract may be terminated for non-compliance by the state upon 30 calendar days written notice. Whether a contract is terminated for non-compliance or by mutual consent, it shall be the responsibility of the outgoing contract distributor to bear the cost of transferring residual products to an alternate warehouse as designated by state officials.

128. SHORTAGE AND DAMAGES

A contract distributor shall be financially responsible for shortages and damages to products or packages that make them unacceptable to the state. Damages shall include infestation of product due to improper storage conditions, as well as physical damage to containers, including rust. Distributors are required to report all losses on a monthly basis; any occurrence resulting in a loss totaling more than \$500 must be reported immediately to the State Office.

Should overage and shortage discrepancies between physical inventory and book inventory exist, such discrepancies shall be reconciled annually. Irreconcilable overages and shortages will be settled by computing the value of such shortages and overages based on the value established by state and federal officials. If the value of overages exceeds the value of shortages, no settlement is required. Book inventory will be adjusted after settlement to correspond with physical inventory. All overages will be reallocated by MDE after the annual warehouse review is concluded.

129. FREIGHT CHARGES

All donated foods are shipped prepaid, product and freight.

130. VOLUME

The volume statewide is approximately 58,647 cases per year. Volume by regions ranges from 5,413 to 17,562 cases of dry per year.

131. ITEMS

Based on 2025 availability, the total number of line items of regular USDA donated Dry foods is approximately twenty-seven (27) of which fifteen (15) will be carried in inventory at any one time. However, the number of items may vary depending on availability and demand.

132. INVENTORY TURNS

Expect inventory to be greatest beginning in August through March. Inventory will decrease in April through July.

133. CASE SIZE

On average, a case will weigh about forty (40) pounds and measure 1.1 cubic feet.

134. TRUCK SHIPMENTS

Inbound shipments will arrive one item per load (1,000 - 2,000 cases on average) in full trailer. However, a distributor should plan on some volume to arrive by piggyback. When shipments are made by piggyback at the discretion of USDA, it is the responsibility of the distributor to either unload the "pig" in the allotted time or pay a fee for holdover. The distributor may request the "pig" company to upgrade the service so that the load will be unloaded by "pig" personnel. Such service upgrade will be at the expense of the contracted distributor.

135. PRODUCT LOADING

BID Name: FOOD DISTRIBUTION

Product will arrive mostly by truck. The majority of product will be palletized. A small number (less than 5%) may arrive slip-sheeted or floor-loaded. It is the responsibility of the carrier to tailgate this product.

The state can request shipments to be either palletized or slip - sheeted. Compliance with these instructions, however, is not guaranteed either by the USDA or the state. Shipments must be unloaded at a distributor's expense and must be accepted regardless of the shipping and/or loading methods.

136. PRODUCT UNLOADING

With truck shipments, truckers are required to call for unloading appointment 24 hours in advance. Should a carrier fail to make an appointment under the terms of this contract, the USDA product must be unloaded as soon as conveniently possible within the normal, daily unloading hours.

137. SCHEDULES

Most items are allocated and/or scheduled for shipment at predictable shipping periods; therefore, a distributor will often know well in advance the types and quantities of food to be received. However, some volatile price items such as chicken and beef are purchased on short notice; therefore, knowledge of shipments might be limited to a shorter lead time.

138. RECEIVING PROCEDURES

Since contract distributors are responsible for all merchandise received, they must exercise similar or greater care in receiving USDA Donated Foods. Loads must be inspected on arrival for product condition and temperature and for damage and infestation. Procedures for receiving inbound freight are as follows:

- a. Inspect load for condition on arrival and verify accuracy of count and acceptability of the load.
- b. Execute **Advance Shipping Notification (ASN)** and forward immediately to state officials along with a copy of the Bill of Lading and other related documents evidencing receipt.
- c. If merchandise is damaged or otherwise unacceptable, notify the trucker and execute **FNS Form 57 Report of Shipment Received Over, Short and/or Damaged** and forward to the state along with the forms mentioned in b. Notify state officials promptly by telephone for disposition of damaged or short product. Recoup damaged merchandise so that all foods suitable for human consumption are salvaged for program use.

A contracted distributor is also responsible for the following:

- a. Assume all freight demurrage and detention charges.
- b. Have sufficient warehouse space to absorb all inbound freight at abnormal peak loads at no additional cost to state or recipient agencies.
- c. Rotate all stock on first-in, first-out basis and provide evidence of stock rotation upon request.
- d. Store donated food off the floor in a manner to allow for adequate ventilation
- e. Stock and space foods in a manner so that USDA donated foods shall be clearly identified.
- f. A contract distributor is liable for claims levied by the USDA as a result of its failure to properly secure, handle, protect, or account for inbound shipments.

139. CONDITION OF SHIPMENTS

If there are any questions concerning the condition of a shipment on arrival, call the State Agency immediately for acceptance instructions. A contracted distributor must accept all shipments in accordance with USDA and/or state instructions.

140. FACILITY REQUIREMENTS

Contract distributors must assure that the storage facilities will be maintained in accordance with the standards specified in 7 CFR 250.12 as detailed below:

- a. are sanitary and free from rodent, bird, insect and other animal infestations;
- b. safeguard against theft, spoilage, damage and other loss;
- c. maintain foods at proper storage temperature and humidity;
- d. stock and space foods in a manner so that USDA donated foods are readily identified
- e. store USDA donated foods off floor in a manner to allow for adequate ventilation
- f. take other protective measures as may be necessary.
- g. obtain and maintain any State or local licenses and/or permits as required.

Contract distributor agrees to the consent for inspection and inventory by the State Distribution Agency (SDA), sub-distributing agency, recipient agency, the Comptroller General, the USDA or any of their duly authorized representatives. Warehouses may be routinely inspected by state officials for sanitation and temperature requirements. Contract distributors shall obtain all required Federal, State, and local health inspections and provide MDE with evidence that inspections/approvals are current upon bid award and upon renewal. Trucks delivering USDA donated foods may be inspected for sanitation and temperature from time to time either by USDA or state authorities.

141. WAREHOUSE REQUIREMENTS

A contractor must provide adequate facilities for storage of the foods indicated in this document, including unusual surges in volume, and have an adequate truck fleet to deliver predicted volumes of frozen, refrigerated, and dry foods. The state reserves the right to examine a bidder's warehouse to assure that the above qualifications are met prior to award of any contract. Contract distributors must have adequate warehouse facilities for the following: Dry Groceries - forced ventilated space Frozen Foods - 0 degrees Fahrenheit or below Refrigerated Items - normally 36 degrees Fahrenheit

The amount of warehouse space required may vary from one region to another.

142. DELIVERIES TO RECIPIENT AGENCIES

Straight or Mixed Loads - a contract distributor may deliver donated foods in straight vans containing donated foods only, or in vans with other foods commercially supplied, as long as other terms of the contract are satisfied. Donated foods may not be stored or delivered with agricultural or other chemicals which may diminish the quality or safety of the donated foods.

143. MINIMUM ORDERS

Every delivery site is entitled to one (the first) delivery a month at the regular rate per case regardless of the number of cases ordered. The second or additional deliveries in a month are required to be a minimum of twenty-five (25) cases per site.

A recipient agency may order less than the minimum order size at any time within a month, by paying the delivery fee for a 25-case order. For example, if a recipient agency wishes to order 17 cases, and pay the 25-case minimum, the charge would be 25 X the case delivery fee rate.

Other sites not meeting the minimum volume requirements in accordance with the minimum order size will receive deliveries once monthly regardless of the order size at the regular case rates.

Recipient agencies that receive warehouse issues are pre-identified. However, any recipient agency may override this identification by ordering 25 cases or paying the per case rate x 25 and receiving a delivery on the next scheduled delivery day.

Note: The minimum order requirements do not apply to organizations that participate in the statewide purchasing cooperative. USDA commodities may be delivered weekly (as ordered) and delivered with the purchased food/non-food items.

144. SCHEDULED DELIVERY DAYS

Deliveries shall be made on a regularly pre-scheduled day of the week (or month), as determined by the contract distributor. Distributors must deliver weekly, provided the 25 case minimum order of donated foods is met. **At a minimum, distributors must deliver donated foods at least once per month, unless the recipient organization has agreed to less frequent delivery.**

Recipient agencies shall be notified of scheduled days of delivery. Notice of changes in delivery schedules must be submitted to recipient agencies two weeks in advance of implementation. Pickups at a distributor's warehouse, if permitted by the contract distributor, shall be made on pre-scheduled days and hours as approved by the contract distributor. Delivery drops shall be made between the hours of 6:30 a.m. – 2:30 p.m. Intermediate deliveries shall be required only if a contract distributor initially fails to deliver a product in stock, in which case, the distributor shall make delivery the following workday.

145. SELF SERVICE AGENCIES

The state reserves the right to make direct shipments to large agencies as may be deemed in the best interest of the program.

146. RECIPIENT AGENCY ORDERS

Separate or congregate orders will be submitted by recipient agencies indicating each drop site. Recipient agencies shall submit orders through the MS USDA ordering system. Distributors will be required to receive USDA orders through this system.

147. RECIPIENT AGENCY DELIVERY TICKETS (Invoice):

A contract distributor shall maintain constant liaison with recipient agencies by tracking utilization of allocated items by recipient agency. Each delivery ticket (invoice) shall show by Recipient Agency and Sales Order Number (SO) the amount delivered.

148. ACCOUNTABILITY

A contract distributor shall be financially responsible for all merchandise released into its care. The contractor must carry insurance on the products in its care, be responsible for shortages and damages, and submit reports as may be required or their offer may be rejected.

149. ALLOCATIONS

Allocations are defined as the assignment of a food item delivered from a specific sales order to recipient agencies (schools). This allocation dictates to the contractor what donated foods a recipient agency is entitled to. The State will submit to the contract distributor notices of allocation for all food items after they have been received. Contract distributors must enter allocation data into their software solution and use this information as a base for generating reports.

150. TECHNOLOGY CAPABILITY

Contract distributors should have adequate computer and software capability to produce and deliver the required reports in a timely manner as well as track residual stocks of allocated items by each eligible recipient agency to prevent over-ordering. For example, if a school district is allocated 150 cases of chicken, the contract distributor must be able to track usage and residuals to prevent over-shipping.

151. MINIMUM REPORT REQUIREMENTS:

At a minimum the contractor shall provide the following reports within the time - frames specified.

- a. Notices of Product Arrival: Contracted distributors shall notify the state daily by telephone, fax or e-mail of product arrival or through appropriate entries in a State agency website.
- b. Receiving: All documents, FNS-57, *Advance Shipping Notifications*, including Bill of Lading, related to the receipt of items at warehouses shall be forwarded to the state office within twenty-four hours of unloading and verification of receipts.
- c. Notice to Recipient Agencies: Monthly notices shall include the amount allocated, delivered, and balance by delivery order number.
- d. Monthly Inventory: Each contract distributor shall maintain perpetual inventory of USDA donated foods. The contracted distributor shall provide the state with monthly inventory reports on all items.
- e. Inventory reports shall show by delivery order number, the value of the food per case, amount allocated, total value of amount allocated, amount shipped, total value of amount shipped, balance on hand, and total value of balance on hand. Each report shall reflect all delivery order numbers for the current year. The report is due to the state five working days after the last delivery day of the month.
- f. Year-End Utilization and Activity: Contract distributor shall provide the state with an end-of-year utilization accountability report. The report shall be in the same format as the monthly inventory report, but shall also include the required information by delivery order by recipient agency.
- g. Loss Reports: USDA products damaged in the warehouse shall be reported to the state agency on a Food Loss Report. Distributors are required to report all losses on a monthly basis. Reports are due to MDE Office of Child Nutrition no later than the 5th working day of the month; any occurrence resulting in a loss totaling more than \$500 must be reported immediately to MDE.

154. RECONCILIATION AND CLOSEOUT

For the purposes of Federal and or State audit, contracted distributors must maintain an audit trail between computer print outs and delivery ticket numbers. Delivery tickets (invoice) must be stored in an organized and easily accessible manner. Invoices may be audited either at the Distributor's warehouse or the distributor may be required to email or deliver them to the State office in Jackson, MS. Invoices may be audited on a sample or entire lot basis.

155. DISASTERS

In the event of a declared disaster, the State agency is responsible for supplying relief to affected areas. MDE must have access to commodities on hand in the distributors' warehouses. This would require access to the distributors' personnel and facilities after hours, weekends, and holidays in the event of a declared disaster.

156. USDA DONATED FOODS BID SUBMISSION

USDA Donated Foods regional bid sheet is provided with this solicitation. The sheet is in MS Excel format and bidders may enter the fee per case for Dry commodities for the regions they shall be bidding. The sheet will automatically calculate the total fees. Print the completed USDA Donated Foods bid sheet for submission.

BID INSTRUCTIONS

Bid Package:

The IFB package consists of the following

Invitation For Bids:

- Page 2 Invitation for Bids Form
- Page 3 - 14 General Instructions
- Page 14 - 27 Special Conditions
- Page 27 - 32 USDA Donated Foods Conditions
- Page 32 - 35 Bid Instructions
- Page 33 - 35 Product Requirements
- Page 35 Tentative Timeline

The following items are provided with bid package

- USDA Donated Foods bid sheet (MS Excel)
- List of Participant Organizations and Delivery Sites (PDF)
- USDA Donated Foods Only Organizations (org's that do not participate in the purchasing cooperative) (PDF)
- Statewide Regional Map (PDF)
- APS website User Manual (PDF)

INVITATION TO BID FORM

All information requested on the invitation to bid form (Page 2) must be completed with original signature affixed. Incomplete and/or unsigned forms may be rejected. Special attention should be given to instructions, conditions and definitions.

ITEM INFORMATION

Item information including approved brands and specifications can be found in the APS bidder system for all items that a bid will be placed. In addition, specifications will also be provided a pdf attachment.

DISTRIBUTOR GROUP

Group "A" items are those food items priced through a contract between MDE and Manufacturers and which are to be purchased, warehoused and delivered by the successful distributor to the participating school districts and other qualified entities. The Distributor will be reimbursed on the basis of price established by the MDE/Manufacturer contract plus a fixed fee for receipt, storage, and delivery. Shipments of Group A products must be received and unloaded at the distributor's warehouse. No slotting fees, unloading fees, or lumper fees may be added to the manufacturer's cost. Costs

of receiving and unloading Group A products may only be recovered through the fixed fees charged participant for each of these items. **This IFB contains no Group "A" items.** However, Group "A" items may be added during the contract period.

Group "B" items are those food items purchased by distributors for delivery to the user entities. These items shall meet the requirements indicated in the item specification of the Bid Item Information screen in APS. The distributor will be reimbursed for Group "B" items on the basis of the price established by the contract between MDE and the distributor plus a fixed fee for delivery.

Group "C" items are those nonfood perishable supply items purchased by distributors for delivery to the user entities. These items shall meet the requirements indicated in the item specification of the Bid Item Information screen in APS. The distributor will be reimbursed for Group "C" items on the basis of the price established by the contract between MDE and the distributor plus a fixed fee for delivery.

USDA DONATED FOODS These are USDA provided food items (dry, refrigerated and frozen) delivered to the distributor's warehouse. The distributor will be reimbursed for storage and delivery of the commodity items to participating entities on the basis of the fixed fee established by the contract between MDE and the distributor. (See paragraph **121. PRICE**).

MDE reserves the right, during the term of the contract, to delete items from Group "B" or Group "C" and either add them to Group "A" or purchase them outright from a selected source. If the latter method is chosen, MDE will purchase and pay for these items and have them delivered to the distributor holding the contract at that specific time. The distributor would be required to deliver the items to the user entity for a fee established using the procedure in paragraph **100. Additions / Deletions / Changes**. Any source selection for these items will be in compliance with all existing applicable Federal/State regulations, statues, or guidelines.

DRY FOOD PRODUCTS

Products designated as "Dry" shall mean any product that does not require freezing or refrigeration.

PREFERENCE FOR AWARDING CONTRACTS

Whenever two (2) or more competitive bids are received, one or more of which relates to commodities grown, processed or manufactured within this state, and whenever all things stated in such received bids are equal with respect to price, quality and service, the commodities grown, processed or manufactured within this state shall be given preference. A similar preference shall be given to commodities grown, processed or manufactured within this state whenever purchases are made without competitive bids, and when practical the Department of Finance and Administration may by regulation establish reasonable preferential policies for other commodities, giving preference to resident suppliers of this state.

PRODUCT REQUIREMENTS

ITEM IDENTIFICATION

The item identification (descriptions) listed herein are not specifications. Product Identifications are limited to requirements which can be verified on delivery or information essential for communication between contractor and participating entities. For example, "U.S." Grades are generally not specified unless there is a grade shield on the container, or the product is accompanied by an inspection certificate. The use of pre-approved brands makes it unnecessary to utilize detailed specifications.

PRODUCT PROTECTION GUARANTEES

Participating entities 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.

BUY AMERICAN

Contractors will ship only domestic commodities or food products to recipient agencies. Domestic definition is, over 51% of the final processed product (by weight or volume) must consist of agricultural commodities that were grown domestically (7CFR210.21(d)). Thus, for foods that are unprocessed, agricultural commodities must be domestic, and for foods that are processed, they must be processed domestically using domestic agricultural food components that are comprised of over 51% domestically grown items, by weight or volume as determined by the MDE.

There are limited exceptions to the Buy American provision which allow for the purchase of foods not meeting the "domestic" standard as described previously (i.e., "non-domestic") in circumstances when use of domestic foods is truly not practicable. These exceptions, as determined by the MDE are:

The product is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality; or
 Competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product. For this purpose, the MDE considers a price difference of 10% to be a significantly higher cost of the domestic item.

Contractors must indicate all products that do not meet the Buy American standard to the MDE for approval. Utilizing the MDE Request for Substitution Form, Contractors must request from the MDE the substitution of domestic with non-domestic products, indicating reason and expected duration. Failure to receive approval from the MDE to deliver Non-Domestic Commodities may result in forfeiture of payment of the non-compliant items delivered.

BRAND “BEING OFFERED”

A potential contractor shall select an approved brand being offered, when applicable.

UNITS OF PURCHASE

Whenever wholesale units of purchase are standardized, i.e., 6/#10, the bid unit is specified as case, box, etc. If case, bag or box is the bid unit, then the identification will specify the exact pack. When a bidder wishes to quote a pack size which is different from the pack size specified in the product identification, the contractor shall always mark out the pack specified and insert the pack being bid. When a product pack size is referenced by a specific weight, size, etc., and the terms "not to exceed", "maximum", "minimum" or any other term indicating that ranges or variances in pack sizes are acceptable are not mentioned, it shall be understood that the specific pack size being requested is the only one considered acceptable.

Example:

ITEM #	PRODUCT DESCRIPTION	APPROVED BRANDS	BID UNIT	
2402	CHERRIES MARASCHINO, HALVES 1 ST QUALITY GALLON / CASE 4 1 Gallon / Case	DISTRIBUTOR CHOICE \ PACKER LABEL	CASE	PRORATED <u>\$10.00</u> UNIT COST <i>(for 4 / ½ gallon)</i> FREIGHT <u>\$0.50</u> <i>(for 4/ ½ gallon)</i> FIXED FEE <u>\$.10</u> <i>(for 4/ ½ gallon)</i> TOTAL <u>\$10.60</u> <i>(for 4/ ½ gallon)</i>
			PACK SIZE	PURCHASE UNIT COST \$21.20 INCLUDING FREIGHT AND FEE <i>(Prorated back to actual pack size being offered for bid.)</i>

When units of pack vary from one packer to another, it is necessary to specify the bid unit in other terms, i.e., pounds, each, 100's, 1000's, etc.

RAW OR COOKED

Meats, poultry and seafood are deemed to be raw (uncooked) unless the term "cooked" is used. Term "cooked" implies "fully" cooked unless a lesser degree of doneness is specified. The term "precooked" implies that additional cooking is necessary before service.

INDIVIDUALLY QUICK FROZEN / IQF

The term "Individually Quick Frozen," or IQF, essentially means that the parts can be removed individually from packages. The term "quick" means frozen "at the time" in a freezer tunnel, either by air blast, nitrogen or carbon dioxide.

CN LABEL

When a product is CN (Child Nutrition) labeled, it is "certified" by the packer to conform to the nutritional requirements of the USDA Food and Nutrition Service (FNS). The label shows the food component contribution made by a given amount of product toward CN meal component requirements.

GRADES

The grades specified herein for fruits, juices and vegetables refer to "Packer Grades" except as specifically indicated otherwise. Packer Grades, offered by major buying groups, have proven reliable over the years, in that these groups utilize USDA standards.

STANDARDS OF IDENTITY

All products must conform to U.S. minimum standards requirements. If not, the supplier (packer) is in violation of not only the contract with the school district, but also with the Federal Food and Drug Administration and/or the Federal Trade Commission. Three (3) important Federal regulations pertaining to canned foods are listed below. These and other federal and state regulations are automatically part of bid requirements.

1. NET CONTAINER QUANTITY

The minimum net quantity of all products in cans and jars shall be in accordance with Section 401 of the Federal Food, Drug, and Cosmetics Act, regarding individual specifications for standards of fill (21 CFR Part 100 -169).

2. FILL of CONTAINERS

All products shall be filled as full as practical under good commercial packing practices without impairment of quality and otherwise in accord with Section 401 of the Federal Food, Drug and Cosmetics Act, regarding individual specifications for standards of fill (21 CFR Part 100-169).

3. DRAINED WEIGHT

Drained weight of "wet pack" items shall conform to good industry practices and the minimum requirements of the Federal Food, Drug and Cosmetics Act for drained weight, as prescribed in the individual specifications of each product in 21 CFR Part 100-169. Except for whole tomatoes, drained weight is not a factor of USDA grade.

APPROVED BRAND

The "Approved Brand" (Product Brand name) space on the Item Information screen in the APS bidders site indicates one of the following:

MANUFACTURERS LABEL

Potential distributors shall offer bids only on those products which are pre-approved items indicating manufacturer's name and product number under "approved brands".

DISTRIBUTORS CHOICE

A product identification is in itself sufficient, in the case of certain generic items such as shrimp. The word "Distributor Choice" will appear in the "Approved Brands" drop down menu in the Item Information section of the APS bidders site and the contractor may bid any label, providing that the brand offered for bid meets the specifications as listed in the "Item Specifications" section on the Item Information screen of the APS bidders site. Bidder shall indicate name and product code on corresponding bid information sheet(s).

PRIVATE LABEL

It shall be intended that only those products carrying a first quality label will be acceptable. The label application and identification shall be based on the attached label.

TENTATIVE TIMELINE

Start Date	
<ul style="list-style-type: none"> • First date of advertisement • Second date of advertisement 	<p>March 3,2025</p> <p>March 10, 2025</p>
Pre Bid Conference at:	March 17, 2025, at 9:00 a.m.
Deadline for submission of questions	March 19, 2025, at 5:00 p.m.
Deadline for question response posting	March 21, 2025

Bidder submission location, deadline date and time 500 Greymont Ave, Suite F, Jackson, MS 39202	April 17, 2025, at 9:00 a.m.
Public opening location, date and time at:	500 Greymont Ave, Suite F Jackson, MS 39202
Bid evaluation period	April 18-24, 2025
Contract Intent to Award	April 25, 2025