



**OAKLAND UNIFIED
SCHOOL DISTRICT**

Community Schools, Thriving Students

RFP/Bid # 20-03

Nutrition Services Groceries

**Oakland Unified School District
Nutrition Services
Irene Reynolds, Executive Director
2850 West Street
Oakland, California 94608
(510) 879-1700**

**Oakland Unified School District, Request for Proposal/Bid No. 20-03
Groceries**

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NOTICE TO BIDDERS

REQUEST FOR PROPOSAL/BID # 20-03

The Oakland Unified School District is requesting bids from providers of grocery products to provide service for the District’s meal service program.

Submission Deadline:

Bids must be received prior to **10:00 A.M., on October 1, 2020.** Bids must be submitted in a sealed envelope, marked with the RFP/Bid number and title, and returned to:

Oakland Unified School District
 Nutrition Services
 2850 West Street
 Oakland, CA 94608
 Attention: Irene Reynolds, Executive Director

Bids received later than the designated time and specified date will be returned to the proposer unopened.

Facsimile (FAX) copies of the proposal will not be accepted.

The District reserves the right to accept or reject any or all proposals or any combination thereof and to waive any irregularity in the bidding process.

Copies of the RFP/Bid documents may be obtained from **Oakland Unified School District, Nutrition Services Department, 2850 West Street, Oakland, CA 94608** or if preferred can be emailed by request. Refer any questions to: **Irene Reynolds, Executive Director, e-mail: irene.reynolds@ousd.org.**

Published: September 17, 2020

RFP/Bid Introduction: This solicitation is requesting sealed proposals from qualified vendors in accordance with applicable state and federal laws governing federally funded child nutrition programs. It is the intent of the Oakland Unified School District’s Nutrition Services Department, hereinafter referred to as the School Food Authority (SFA or District), to award a contract to procure specified items listed in this document. Vendors are invited to submit a proposal to provide specified items to the SFA. A vendor who submits a proposal in response to this solicitation will be hereinafter referred to as “Proposer”.

Schedule of events:

- September 17, 2020 - RFP Released
- September 24, 2020 - Deadline to Receive Questions
- October 1, 2020 - Proposals Due, 10:00 a.m. deadline
- October 7, 2020 - Bid Opening, 10:00 a.m.
- October 14, 2020 - Board of Education Meeting
- October 15, 2020 - Contract Start Date

Submission of Proposals: Proposers may mail sealed proposals, to the address and staff member designated by the proposal submission deadline defined on the NOTICE TO BIDDERS page. It is the Proposer’s responsibility to assure that its proposal is received by this deadline, no exceptions. Proposers may also request confirmation of receipt by emailing Irene Reynolds, irene.reynolds@ousd.org. Regardless of submission method, it is the responsibility of the Proposer to confirm and ensure that the sealed proposal was received by the submission deadline. Proposals will be accepted up to, and no proposals will be accepted after, the RFP/Bid submission deadline. Time is Pacific Standard Time as indicated on the designated clock at the SFA. Proposals that arrive after the submission deadline will not be considered. It is the responsibility of the Proposer to ensure that the proposal arrives at the required location by the submission deadline.

The SFA will not be responsible for the opening of, post-opening of, or failure to open a proposal not properly addressed or identified.

The SFA will not assume responsibility for any delay as a result of failure of the mail or other delivery service to deliver proposals on time.

Proposal Withdrawal: Proposals may be withdrawn by the Proposer prior to the time denoted for opening the submissions, but after the opening, submissions may not be withdrawn for a period of sixty (60) days. A successful Proposer shall not be relieved of the submitted proposal without the consent of the SFA or recourse through Public Contract Code Section 5100 et. seq.

Correction of Mistakes: Do not erase, correct, or write over any prices or figures necessary for the completion of the proposal. Corrections should be made by drawing a line through the unwanted text(s) or number(s) and rewriting the correct text(s) or number(s). If a correction is necessary, the Proposer shall initial each correction. Failure to comply with the requirements may cause your proposal to be disqualified. No proposals shall be altered or amended after the specified time for opening.

Signatures: All proposals must show the firm name and must be signed by a responsible officer or employee fully authorized to bind the organization to the terms and conditions herein. Obligations assumed by such signature must be fulfilled. All signatures must be original.

Cost of Preparing Proposal: Proposers are responsible for the costs of preparing and submitting the Bid. Materials submitted as part of the proposal will become the property of the SFA unless otherwise noted.

Reservation of Rights: The SFA expressly reserves the following rights:

1. To reject any and all proposals;
2. To reject any part of a proposal not meeting the specifications set forth in the RFP/Bid documents;
3. To waive any irregularities and technicalities and may, at its sole discretion, request a clarification or other information to evaluate any or all proposals;
4. To re-award the solicitation to another Proposer in the event the Proposer whose Bid is selected defaults in executing the formal agreement; and
5. In the best interests of the SFA, accept or reject any and all portions thereof, select the next most responsive proposal, or if necessary, issue a new solicitation or take other action as the SFA deems appropriate.

Non-Collusion: By submission of the proposal, the Proposer certifies that the proposal has been arrived at independently and submitted without collusion with any other Proposer and that the contents of the proposal have not been communicated, to the best of its knowledge and belief, by any one of its employees or agents, to any person not an employee or agent of the Proposer and will not be communicated to any person prior to the official opening of the proposal.

Prices: Proposers are encouraged to submit the most competitive pricing possible because the SFA will be soliciting multiple bids from Bidders to achieve the lowest possible price for the specifications and requirements outlined in this solicitation. Prices should be stated and shown as instructed on the Proposer Pricing Sheet for each item, in the amount of quantity specified. Taxes shall not be included. If during the contract period there should be a decrease in the prices of the items included in the Bid, a corresponding decrease in prices on the balance of deliveries shall be made to the District for as long as the lower prices are in effect. At no time shall the prices charged the District exceed the prices in the Bid. The District shall be given the benefit of any lower prices which may, for comparable quality and delivery be given by the contractor to any other school district or any other state, county, municipal or local governmental agency in Alameda County for products listed herein.

The Selected Vendor shall be responsible for automatically requesting to renew any expiring bid pricing or allowances on all items the District is purchasing at the time of expiration. The District shall supply the Selected Vendor proper documentation authorizing them to do so on behalf of the District.

Selected Vendor must maintain documentation of costs and discounts, rebates, and other applicable credits, and must furnish such documentation upon request to the SFA and the State agency. (7 CFR §210.21.)

Estimated Usage: Usage given is estimated based on District use or projected use. These quantities are not guaranteed by the District but are included for information and planning purposes only. They will be used to determine award; however, actual amounts may vary, in addition to deviation from the specific products listed on the attached bid sheet. The District reserves the right to purchase more or less of the units specified. The SFA will not guarantee minimum compensation to be paid to Selected Vendor.

Product Specifications: Manufacturer/brand name and numbers that reflect the level of quality expected may be referenced. The Proposer may submit quotations on that or a proposed equal product provided they are equivalent and substantiated to be so by submitted specifications. The SFA may require samples to determine product acceptance. The SFA reserves the right to make sole judgment as to acceptability of proposed equal products to referenced products without qualification or explanation.

Samples: If requested, Provider shall furnish samples free of cost to the District. They are to be sent within seven (7) days of such a request to Oakland Unified School District, Nutrition Services, 2850 West Street, Oakland, CA 94608. The District reserves the right to reject the Bid of any Proposer failing to submit samples as requested. Samples must be plainly marked with name of responder and RFP/Bid#. The District shall be the sole judge of whether a product meets or exceeds product specifications.

Delivery/Freight On Board (FOB) Destination Pricing: Time and manner of delivery are essential factors in proper performance under the contract. **Proposer must quote prices FOB Destination to the delivery location(s) designated by the District for all transactions under the contract. The District will not pay shipping and handling charges, nor shall the District pay for any fuel surcharges.** If the material is not received within the time specified for delivery, it will be received at the discretion of the District. Should it be necessary to refuse delivery of any material contained in the RFP/Bid document, the Vendor shall be responsible for all associated costs. Each item shall be securely and properly packed and clearly marked as to contents. All items purchased for delivery by truck or freight line shall be palletized. The preferred pallet size should be 48" long by 40" wide. All shipments shall be accompanied by an invoice.

The District will provide the Selected Vendor with a schedule of deliveries. The Vendor shall furnish all labor, materials, costs incurred and equipment necessary for the delivery of items specified herein to the District's facilities on a scheduled basis. All work shall be performed in a thorough and workman-like manner under the administration of, and to the approval of the District.

All refrigerated goods shall be delivered in properly insulated refrigeration equipment, maintaining goods at or below forty (40) degrees Fahrenheit; frozen goods should be maintained at or below zero (0) degrees Fahrenheit.

Deliveries are to be made inside the building to the location(s) indicated. Two copies of an itemized delivery form will be left with the site representative. Shortages, damaged and unacceptable items will be noted on the delivery slip. Items not accepted must not be billed to the District. The District reserves the right to reject any product. The Vendor shall notify the District at least 72 hours prior to the regular delivery of any unfilled order to allow sufficient time to order a substitute item. Emergency next day deliveries may occasionally be required.

Experience and Service: Proposers are advised they must demonstrate the ability to provide the necessary products and services required under the contract. Proposers are required to submit three references listing currently serviced school districts. The list shall include district name, food service director's name and phone number. Proposers may be required to verify that they have been in the business called for in this Request for Proposal/Bid for at least twelve (12) months. Experience and service are factors in the award of this contract.

A vendor's recent delivery and performance under any previous or existing agreement or contract may be examined. Poor performance or references of current or past customers may be used in the evaluation. Proposers, therefore, release the organizations and individuals listed from any claim or liability, because of responses given to requests for information by the District regarding the Proposer and/or the Proposer's performance of work.

Method of Award: Proposals that are submitted timely and are not subject to disqualification will be reviewed in accordance with the evaluation criteria set forth in this solicitation. In addition, the SFA may conduct a pre-award audit. A contract will be awarded to the responsive and responsible Proposer with the highest total score based on the criteria set forth in this solicitation. Winning Proposer will be herein referred to as the "Selected Vendor." If the Selected Vendor to whom an award is made fails or refuses to execute a contract and

provide the required certificates, licenses and permits, the District may award the contract to the next responsive and responsible proposer, reject all bids, call for new bids or disqualify the bid.

- A “*responsive Proposer*” will be able to meet the requirements described in this solicitation.
- A “*responsible Proposer*” is willing and capable of furnishing the goods or services described in this solicitation.

RFP/Bid Protest Procedures: If any Proposer who submitted a proposal has an objection to the award of the contract to the apparent Selected Vendor, the objecting Proposer shall furnish that protest, in writing, to the SFA within five (5) business days of the date of the Proposer notification of the awarded contract. The protest shall describe in detail the basis for the protest, and shall request a determination under this section. If a protest is filed in a timely fashion, the SFA will review the basis for the protest and relevant facts under such terms and conditions as the SFA considers proper. Upon completion of the review, the SFA shall submit its findings and recommendations to the District’s Governing Board, which shall then review the matter under such terms and conditions as deemed proper. Upon receipt of authority to act from the Governing Board, the SFA will notify those Proposers involved of its decision. The decision shall be final and binding on the objecting Proposer.

Debarment and Suspension: To ensure that the SFA does not enter into a contract with a debarred or suspended company or individual, each vendor must include a certification statement with each bid on each contract. By signing the certification statement, the Vendor certifies that neither it nor any of its principals (e.g., key employees) have been proposed for debarment, debarred or suspended by any State or Federal Agency. It is the responsibility of each Vendor to sign the attached certification statement and submit it with the bid. Failure to comply with this requirement will cause your bid to be disqualified, and declared non responsive.

Risk of Loss: The Selected Vendor assumes the following risks: (1) all risks of loss or damage to all goods, work in process, materials, and equipment until the delivery thereof as herein provided; (2) all risks of loss or damage to third persons and their property until delivery of all goods as herein provided; (3) all risks of loss or damage to any property received by the Selected Vendor or held by the Selected Vendor or its suppliers for the account of the SFA, until such property has been delivered to the SFA; (4) all risks of loss or damage to any of the goods or part thereof rejected by the SFA, from the time of shipment thereof to Selected Vendor until redelivery thereof to the SFA.

Insurance: The Selected Vendor shall maintain, during the entire term of this contract, adequate insurance to protect itself from claims under Workmen's Compensation Acts and from claims for damages or personal injury, including death and damage to property that may arise from operations under the order. The following outline the minimum insurance requirements and other required documentation:

- a. Comprehensive General Liability Insurance for Combined Single Limit Bodily Injury and/or Property Damage of not less than \$1,000,000 per occurrence and \$5,000,000 aggregate.
- b. Workers’ Compensation Insurance in such amounts as required by law
- c. Motor vehicle liability insurance - minimum limits of \$250,000 per person and \$500,000 per occurrence for bodily injury liability and \$100,000 for property damage liability is required on each vehicle owned, non-owned, or hired to be used in conjunction with the awarded contract.

The Selected Vendor may be required to provide proof of such insurance, naming Oakland Unified School District as additionally insured by separate endorsement.

Hazardous Material: The vendor represents that each product furnished is safe for normal use, is nontoxic, presents no abnormal hazards to persons or the environment, and may be disposed of as normal refuse. All materials, supplies, and equipment furnished or services performed under the terms of the purchase order or contract issued in response to this RFP/Bid shall comply with the requirements and standards specified in the Occupational Safety and Health Act of 1970, 29 U.S.C. SS 651 et seq., and regulations. If applicable, Safety Data Sheets must be sent with the proposal.

“Buy American” Provision: Pursuant to California Public Contract Code Section 3410 and Title 7, Code of Federal Regulations 210.21(d), a preference to United States-grown produce and United States-processed foods, etc. will be provided when there is a choice and it is economically feasible to do so. 51 percent of the final processed end product must consist of agricultural commodities that were grown domestically. Exception to the Bu American provision can be used if: (a) Availability (in relationship to quantity ordered) of the domestic food item is not sufficient to meet the District’s needs; or (b) Price of the domestic food item is significantly higher than foreign alternative. The Selected Vendor must ensure that whenever food is purchased by the District from non-domestic sources, one of the above outlined exceptions has been met. The District reserves the right to request documentation of the above exceptions for any non-domestic food products delivered under this contract.

Drug Free Workplace Policy: The Vendor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on District premises. Any violation of this prohibition by the Vendor, its employees, agents or assigns shall be deemed a material breach of contract.

Force Majeure Clause: The parties to the order shall be excused from performance during the time and to the extent that they are prevented from obtaining, delivering or performing by act of God, fire, strike, loss, shortage, transportation facilities, walkout, or commandeering of materials, products, plants, or facilities by the government, provided that the non-performance is not due to the fault or neglect of the supplier. In such cases, however, satisfactory evidence thereof must be presented.

Hold Harmless Clause: The awarded vendor shall hold harmless and indemnify the SFA/School District, its officers, and employees from every claim or demand which may be made by reason of:

- a. Any injury to person or property sustained by the supplier or by a person, firm or corporation employed directly or indirectly by him, in connection with his performance under the order.
- b. Any injury to person or property sustained by any person, firm or corporation caused by any act of neglect, default, or omission of the supplier or of any person, firm or corporation employed directly or indirectly employed by him in connection with his performance under the purchase order.
- c. Any liability that may arise from the furnishing of the use of any copyrighted or uncopyrighted composition, secret process, or patented, or unpatented invention in connection with his performance under the order.

Food Recall: Food/beverage suppliers shall be expected to comply with all Federal, State, and local mandates regarding the identification and recall of foods from the commercial and consumer marketplace.

Food Safety: Food/beverage vendors shall be expected to comply with all federal, state, and local mandates regarding food safety and are expected to have adequate controls in place to ensure the safety of the food/beverages provided. Vendor will define their food safety policy and procedures on a separate document to be submitted along with the Proposal.

Equal Opportunity Employer / Federal Non-Discrimination Statement: In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, disability, age, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

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

To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, (AD-3027) found online at: http://www.ascr.usda.gov/complaint_filing_cust.html , and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by:
(1) mail: U.S. Department of Agriculture
Office of the Assistant Secretary for Civil Rights
1400 Independence Avenue, SW
Washington, D.C. 20250-9410;
(2) fax: (202) 690-7442; or
(3) email: program.intake@usda.gov

This institution is an equal opportunity provider.

Proposer Agreement: Oakland Unified School District will sign the proposal of the Selected Vendor which will serve as the notice of intent to award. The contract will include all terms and conditions as described in this RFP/Bid, including the terms and conditions included in the Sample Contract (Attachment L), submission responses from the Selected Vendor and any other negotiated terms and conditions agreed to in writing by both parties. The complete contractual requirements for both the SFA and Selected Vendor will be approved in open session by the Board of Education.

Contract Maintenance: The SFA will monitor the awarded contract for vendor compliance of the contract and communicate with the Selected Vendor if/when necessary to discuss product shortages, delivery times, product quality including other options, billing issues, special orders, or other selected issues.

Contract Modification: The SFA reserves the right to modify the awarded contract by mutual agreement between the SFA and Selected Vendor, so long as such modification would not result in a material change to the solicitation and awarded contract. Such modifications will be evidenced by the issuance of a written authorized amendment by the SFA.

Contract Term: The initial awarded contract period shall be October 15, 2020 to June 30, 2021. This awarded contract may be renewed under the same prices, terms, and conditions for up to two (2) additional one-year terms by mutual agreement of the SFA and Selected Vendor after the SFA has conducted an annual Vendor Performance and Evaluation.

Initial term:	October 15, 2020 to June 30, 2021
Option Year 2:	July 1, 2021 to June 30, 2022
Option Year 3:	July 1, 2022 to June 30, 2023

Vendor Performance and Evaluation: The SFA will evaluate the Selected Vendor's performance status and product quality. The awarded contract will not automatically renew but will be based upon the SFA evaluating and analyzing Selected Vendor performance.

Mutual Agreement Termination: With mutual agreement of both parties to a contract, upon receipt and acceptance of not less than thirty (30) days written notice, the contract may be terminated on an agreed upon date before the end of the contract period without penalty to either party.

Termination for Convenience or Non-Performance: The SFA may terminate the awarded contract prior to the expiration of the term without cause and without penalty, upon thirty (30) days' written notice to the Selected Vendor. The SFA reserves the right to immediately terminate the awarded contract if the circumstances are detrimental to the health and welfare of the students and/or school personnel, the quality of services are seriously affected, or the vendor ceases operations. In the event of such a termination, the SFA may award the contract to the next-lowest bidder provided that such an award complies with Public Contract Code § 5106.

Invoices and Payments: Invoices are to be provided upon delivery of materials or services performed. Quantities, item descriptions, unit prices, date and delivery site name must be on all invoices. Payment terms shall be net sixty (60) days. The District shall make payment for materials, supplies, or services furnished under the contract within a reasonable and proper time after acceptance thereof and approval of the invoices by the authorized District Representative.

The vendor shall issue credits for products that do not meet the District's standards such as:

- Product shortage upon delivery
- Product quality
- Food Safety and/or Sanitation
- Specifications set forth in this RFP/Bid

Discount for Prompt Payment: Discounts/terms for prompt payment will not be considered in the evaluation of proposals. However, any offered discount will form a part of the awarded contract and will be taken if payment is made within the discount period indicated in the proposal by the Proposer. As an alternative to offering a prompt payment discount in conjunction with the proposal, Proposer may include prompt payment discounts on individual invoices, if awarded the contract.

Product Substitution/Manufacturer's Brand Change/Product Reformulation: The Selected Vendor may not supply substitutions, brand changes, or reformulations of products without the written authorization by the District. If during the course of the contract there is a manufacturer's brand change or reformulation of the product, the vendor shall not automatically substitute the product. The vendor shall submit a Child Nutrition Label and/or product specification sheet, Product Formulation Statement, Nutrition Facts, Ingredient Lists, and/or other pertinent product information as deemed by the District for approval prior to further shipment. The District shall be the sole judge of whether the product(s) are acceptable.

Quantity and Quality of Materials and Services: The Selected Vendor shall furnish and deliver the products/services designated by the contract. All materials, supplies or services furnished under the contract shall be in accordance with the District specifications, the District sample, or the sample furnished by the Proposer and accepted by the District. Materials or supplies which, in the opinion of the District, are not in

accordance and conformity with the District's specifications shall be rejected and removed from the District's premises at the Vendor's expense. Vendor shall not be paid for incomplete cases and product(s) not delivered within the agreed delivery time period. All items of equipment and individual components, where applicable standards have been established, shall be listed by the Underwriter Laboratories, Inc., (UL) and bear the UL label.

Outside of the Nutrition Services Department: The Selected Vendor is prohibited from selling or providing items to District schools or District employees outside of this contract without the written consent of the Nutrition Services Department. The Nutrition Services Department will evaluate requests based upon nutritional content to ensure compliance with United States Department of Agriculture (USDA) and California Department of Education (CDE) guidelines. Vendor shall charge the same price as agreed upon in this RFP/Bid.

Recordkeeping: Any and all documents, books, records, invoices, and/or quotations of SFAs' purchases shall be made available, upon demand, in an easily accessible manner for a period of at least five (5) years from the end of the contract term (including renewals) to which they pertain and after all other pending matters are closed, for audit, examination, excerpts and transcriptions by the SFA, State, and Federal representatives and auditors in accordance with Federal regulations. Selected Vendor must ensure that any such records held by a subcontractor are likewise subject to these provisions.

Award Criteria:

The District intends to award to the responsible Proposer whose proposal is most advantageous to the District's program(s) with price and other factors considered.

Criteria	Points
Pricing	25
Customer Service, Satisfaction and Previous Performance	20
Delivery System	20
Food Safety	15
Ordering System and Reports	10
Local Sourcing	10
Total Points	100

Proposers will be considered responsible if they score 80 or more total points. The award will go to the responsible Proposer with the highest criteria score.

RFP/BID RESPONSE PACKET REQUIREMENTS

Bid Requirements: The SFA assumes no responsibility for errors or misinterpretations resulting in incomplete solicitation documents. It is the Proposer's responsibility to use a complete set of RFP/Bid documents in the preparation and submission of its proposal. The forms furnished as part of this solicitation **MUST** be used for the proposal and must be signed by the proposer. No proposals will be considered unless made on the forms provided and must not be detached from the solicitation document of which it forms a part. Failure to follow these instructions may result in your proposal being disqualified.

1) Proposer will need to complete, sign, and return all attachments:

- ATTACHMENT A: PROPOSER CHECKLIST
- ATTACHMENT B: VENDOR CONTACT INFORMATION
- ATTACHMENT C: NON COLLUSION AFFIDAVIT
- ATTACHMENT D: SUSPENSION AND DEBARMENT CERTIFICATION
- ATTACHMENT E: CERTIFICATION REGARDING LOBBYING
- ATTACHMENT F: DISCLOSURE OF LOBBYING ACTIVITIES
- ATTACHMENT G: BUY AMERICAN CERTIFICATION FORM
- ATTACHMENT H: REFERENCES FORM
- ATTACHMENT I: FOOD SAFETY PROCEDURES
- ATTACHMENT J: PRODUCT SPECIFICATIONS AND CONDITIONS
- ATTACHMENT K: PROPOSER PRICING SHEET

2) Proposals must be delivered no later than **Thursday, October 1, 2020 10:00 a.m.**

- Proposals must be delivered in a **sealed envelope** and identified with the **RFP/Bid #20-03**. Emailed or faxed RFP's will not be accepted.

Deliver proposals to the following location:

Oakland Unified School District
Nutrition Services Department
Attention: Irene Reynolds, Executive Director
2850 West Street
Oakland, CA 94608

ATTACHMENT A: PROPOSER CHECKLIST
Oakland Unified School District
Request for Proposal No. 20-03

This checklist is provided as a convenience to assist proposers in ensuring that a complete proposal is submitted. It is not represented as being comprehensive and compliance therewith does not relieve the proposer of responsibility of compliance with any requirements which may not be mentioned specifically in this checklist. **Original documents with original signatures are required.** Failure to comply with this requirement will constitute proposer disqualification due to non-responsiveness. Faxed or emailed documents will not be accepted under any circumstances.

All of the items listed must be returned to constitute a complete response. Please check the box and initial in the appropriate column to signify compliance.

Check <input checked="" type="checkbox"/>	Initials	Required Document
<input type="checkbox"/>		Attachment A: Proposer Checklist (this form). All items are checked, initialed, signed, and included in the complete response package. Return completed hard copy with initials
<input type="checkbox"/>		Attachment B: Vendor Contact Information Return completed hard copy
<input type="checkbox"/>		Attachment C: Non Collusion Affidavit Return completed hard copy with original signature
<input type="checkbox"/>		Attachment D: Suspension and Debarment Certification Return completed hard copy with original signature
<input type="checkbox"/>		Attachment E: Certification Regarding Lobbying Return completed hard copy with original signature
<input type="checkbox"/>		Attachment F: Disclosure of Lobbying Activities Return completed hard copy with original signature
<input type="checkbox"/>		Attachment G: Buy American Certification Form Return completed hard copy with original signature
<input type="checkbox"/>		Attachment H: References Form Return completed hard copy
<input type="checkbox"/>		Attachment I: Food Safety Plan/Procedures Return completed hard copy
<input type="checkbox"/>		Attachment J: Product Specifications and Conditions Return completed hard copy with original signature
<input type="checkbox"/>		Attachment K: Proposer Pricing Sheet Return completed hard copy with original signature

ATTACHMENT B: VENDOR CONTACT INFORMATION

The following information is required when submitting a response to this solicitation. Please complete ALL areas.

Mark "N/A" for those which are not applicable. Type or print legibly.

LEGAL NAME OF BUSINESS: _____
DBA OR BUSINESS NAME (IF DIFFERENT) _____

ADDRESS OF BUSINESS
STREET ADDRESS: _____
CITY: _____ STATE: _____ ZIP: _____

PAY OR REMIT ADDRESS
LEGAL NAME OF BUSINESS: _____
STREET ADDRESS: _____
CITY: _____ STATE: _____ ZIP: _____

TELEPHONE NUMBER: (____) _____
TOLL FREE NUMBER: (____) _____
FAX NUMBER: (____) _____
EMAIL: _____
BUSINESS FEDERAL IDENTIFICATION NUMBER: _____
(SELF-EMPLOYED VENDORS ARE REQUIRED TO SUBMIT THE FEDERAL IRS W-9 FORM)

ACCOUNT MANAGER: _____
TELEPHONE NUMBER: (____) _____
CELL PHONE NUMBER: (____) _____
FAX NUMBER: (____) _____
EMAIL: _____

CUSTOMER SERVICE REPRESENTATIVE: _____
TELEPHONE NUMBER: (____) _____
CELL PHONE NUMBER: (____) _____
FAX NUMBER: (____) _____
EMAIL: _____

BILLING QUESTIONS CONTACT PERSON: _____
TELEPHONE NUMBER: (____) _____
CELL PHONE NUMBER: (____) _____
FAX NUMBER: (____) _____
EMAIL: _____

EMERGENCY CONTACT PERSON FOR BEFORE/AFTER HOURS: _____
TELEPHONE NUMBER: (____) _____
CELL PHONE NUMBER: (____) _____
FAX NUMBER: (____) _____
EMAIL: _____

ATTACHMENT C: NON COLLUSION AFFIDAVIT

TO BE EXECUTED BY PROPOSER AND SUBMITTED WITH THE PROPOSAL

(Public Contract Code Section 7106)

STATE OF _____)

COUNTY OF _____)

_____, being first duly sworn, deposes and says
(name)

that he or she is _____ of
(position title)

(the proposer)

the party making the foregoing bid; that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

DATED: _____

By _____
(Person signing for proposer)

ATTACHMENT D: SUSPENSION AND DEBARMENT CERTIFICATION

U. S. DEPARTMENT OF AGRICULTURE

INSTRUCTIONS: SFA to obtain from any potential vendor or existing contractor for all contracts in excess of \$100,000. This form is required each time a bid for goods/services over \$100,000 is solicited or when renewing/extending an existing contract exceeding \$100,000 per year. (Includes Food Service Management and Food Service Consulting Contracts.)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions

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

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS)

The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Oakland Unified School District 612500

Name of School Food Authority Agreement Number

Potential Vendor or Existing Contractor (Lower Tier Participant):

Printed Name Title

Signature Date

DO NOT SUBMIT THIS FORM TO THE CDE. RETAIN WITH THE APPLICABLE CONTRACT OR BID RESPONSES.

INSTRUCTIONS FOR CERTIFICATION (INSTRUCTIONS FOR ATTACHMENT D)

1. By signing and submitting this form, the prospective lower tier participant (one whose contract for goods or services exceeds the Federal procurement small purchase threshold fixed at \$100,000) is providing the certification set out in accordance with these instructions.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this form that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

ATTACHMENT E: CERTIFICATION REGARDING LOBBYING

INSTRUCTIONS: To be completed and submitted ANNUALLY by any child nutrition entity receiving Federal reimbursement in excess of \$100,000 per year and potential or existing contractors/vendors as part of an original bid, contract renewal or extension when the contract exceeds \$100,000.

**Applicable to Grants, Subgrants, Cooperative Agreements, and Contracts
Exceeding \$100,000 in Federal Funds**

Submission of this certification is a prerequisite for making or entering into this transaction and is imposed by section 1352, Title 31, U.S. Code. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

- (1) No Federal appropriated funds have been paid or will be paid by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of a Federal contract, the making of a Federal grant, the making of a Federal loan, the entering into a cooperative agreement, and the extension, continuation, renewal, amendment, or modification of a Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all covered subawards exceeding \$100,000 in Federal funds at all appropriate tiers and that all subrecipients shall certify and disclose accordingly.

Name of School Food Authority Receiving Child Nutrition Reimbursement In Excess of \$100,000:		Agreement Number:
Oakland Unified School District		612500
Address of School Food Authority:		
2850 West Street, Oakland, CA 94608		
Printed Name and Title of Submitting Official:	Signature:	Date:
Irene Reynolds, Executive Director		

OR

Name of Food Service Management or Food Service Consulting Company:		
N/A		
Printed Name and Title:	Signature:	Date:
N/A		

ATTACHMENT F: DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See public burden disclosure)

<p>1. Type of Federal Action:</p> <p>a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance</p>	<p>2. Status of Federal Action:</p> <p>a. bid/offer/application b. initial award c. post-award</p>	<p>3. Report Type:</p> <p>a. initial filing b. material change</p> <p>For material change only: Year _____ Quarter _____ Date of last report _____</p>
<p>4. Name and Address of Reporting Entity: ___ Prime ___ Subawardee Tier____, if Known:</p> <p>Congressional District, if known:</p>	<p>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</p> <p>Congressional District, if known:</p>	
<p>6. Federal Department/Agency:</p>	<p>7. Federal Program Name/Description:</p> <p>CFDA Number, if applicable: _____</p>	
<p>7. Federal Action Number, if known:</p>	<p>9. Award Amount, if known:</p> <p>\$ _____</p>	
<p>10. a. Name and Address of Lobbying Registrant (if individual, last name, first name, MI):</p>	<p>b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):</p>	
<p>11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</p>	<p>Signature: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Telephone No.: _____</p> <p>Date: _____</p>	
<p>Federal Use Only</p>	<p>Authorized for Local Reproduction Standard Form - LLL (Rev. 7-97)</p>	

ATTACHMENT H: REFERENCES FORM

References

Proposers must submit three school districts of similar size that are current customers. Proposers, therefore, release the organizations and individuals listed in this form from any claim or liability, because of responses given to requests for information by the District regarding the vendor and/or vendor's performance of work.

Name of School:

Address:

Telephone:

Contact:

Start/End Date:

Name of School:

Address:

Telephone:

Contact:

Start/End Date:

Name of School:

Address:

Telephone:

Contact:

Start/End Date:

ATTACHMENT J: PRODUCT SPECIFICATIONS AND CONDITIONS

Product Specifications and Conditions: Any items identified with Trans Fats are strictly prohibited from being sold to the District. In order to accommodate the nutritional requirements set forth by the United States Department of Agriculture (USDA) and California Department of Education Nutrition Services Division (CDE NSD), the District requires product specification and/or nutritional analysis data for products purchased and utilized in the Child Nutrition Services meal programs. The normal shelf life of products delivered to the District shall be no less than 14 day for dairy products including milk, yogurt, cheese and eggs, not less than 10 days for other refrigerated and perishable products, not less than 4 months for frozen products and not less than 6 months for any other products.

General Definition of Products:

- A. Grocery, Dry:** A complete range of shelf stable products including, but not limited to, canned and dried fruits and vegetables, non-dispensed beverages, juices and beverage mixes, crackers, cookies and snacks, cereals, grains and pastas, nuts, canned soups, chili and sauces, syrups, jellies, spreads, icings and toppings, shortenings and oils, shelf stable dressings, condiments and pickles, individual portion packets, gelatin and dessert mixes, pie fillings and puddings, bakery mixes, flours and sugars, gravy mixes, seasonings, flavorings, spices and seasoning mixes and any other dry and shelf stable products.
- B. Grocery, Refrigerated:** A complete range of refrigerated grocery products including, but not limited to, chilled products, prepared and unprepared meats, milk and dairy items, eggs, processed and unprocessed vegetables and fruits, vegetable, fruit and pasta salads, chilled dressings, sauces and gravies and any other products needing to be stored under refrigeration.
- C. Grocery, Frozen:** A complete range of frozen grocery products including, but not limited to, fruits and vegetables, prepared entrees, non-dispensed frozen juice, prepared and unprepared meats, dairy items, frozen dressings, sauces and gravies, bread and bakery products and any other products needing to remain frozen.

Packaging: All products shall be received in clean, sealed packages in undamaged cases from the production facility.

Packages shall be so construed as to ensure safe and sanitary transportation to the point of delivery. Damaged containers may be rejected and returned for credit or immediate replacement to the original site at no cost to the District for product or delivery. All packaging materials shall be FDA approved and meet all pertinent state and federal regulations for safe use with foods. Packaging materials shall impart no odor, flavor, or color to the product. Cases or product shall be clearly and legibly labeled with product name, code, weight, and count. All costs for containers shall be borne by the vendor.

Pricing: Contract prices awarded as a result of this price request shall remain firm for the contract period. **Any changes (up or down) in price must be announced to school district officials 30 days preceding the effective price change.** The District reserves the right to request verification of any change in prices, the price per unit percentage markup must remain firm for the full contract period. In the event of a price change effective between the opening date of this price request and the inception date of the contract, the successful vendor shall reflect any decrease and may reflect any increase at the beginning of the contract.

Ordering: The District prefers to place orders online and receive an email confirmation. The District reserves the right to add, remove or delete product based on school needs. Only vendors with no minimum order requirements will be considered for award.

Substitutions: Substitutions in quality or quantity must receive prior approval from the Nutrition Services Department in order to qualify for payment. Only substitutions of equal or greater quality will be accepted. All substitutes must reflect an equal or less than price per unit as quoted in the bid.

Delivery: The District reserves the right to make additions to, or deletions from, the lists of school sites to be served at any time during the period of the contract, and revise delivery times as required. Awarded vendor(s) will be required to make direct deliveries to approximately 34 sites. Sites require between 1-5 day(s) per week deliveries due to storage limitations or volume purchases. Deliveries shall be made utilizing adequate vehicles such as dual compartment trucks (with liftgates as necessary) for combined deliveries and adequate equipment such as pallet jacks and hand trucks. All deliveries shall occur between the hours of 7:00 a.m. and 12:00 noon. Dark drops will not be accepted. If a scheduled delivery day is a holiday, deliveries will occur on the next business day after the holiday. For emergency orders, the vendor will be required to make direct deliveries to various cafeterias/kitchens or other locations as requested by the District. Delivery vehicles are to be cleaned on a regular basis, free of excessive dirt and debris and clearly labeled with the name of the vendor.

1. See the “Table A – Oakland Unified School District School and Delivery List”.
2. No minimum delivery requirements.
3. Products must be delivered in packaging that is clean as well as in clean vehicles.
4. All deliveries are to be placed into the designated storage/cooler area(s), which may be more than one, at each site by the delivery driver.
5. Delivery shall not be made so close to service time as to create concern by the school site. Delivery schedule is to be pre-scheduled to coincide with school and existing route flow for responder’s best reduction of expenses, mileage, and time.
6. All deliveries must be accompanied by a computerized invoice. Invoice is to include, for each item: item identification, unit price, price extension and total price of delivery. Sufficient time must be allowed at time of delivery for adequate inspection of product, not only for quantity, but also quality of product. Invoice will be signed only after inspection of product. The District reserves the right to reject products delivered in error, not delivered according to specifications, of sub-standard quality or unusable due to code date.

Table A – Oakland Unified School District School and Delivery List

School Name	School Type	Address
BELLA VISTA ELEMENTARY SCHOOL	Elementary School	1025 East 28th Street, 94606
EAST OAKLAND PRIDE ELEMENTARY SCHOOL	Elementary School	8000 Birch Street, 94621
FRANKLIN ELEMENTARY SCHOOL	Elementary School	915 Foothill Boulevard, 94606
GARFIELD ELEMENTARY SCHOOL	Elementary School	1640 22nd Avenue, 94606
INTERNATIONAL COMMUNITY / THINK COLLEGE NOW	Elementary School	2825 International Blvd, 94601

LA ESCUELITA ELEMENTARY SCHOOL / METWEST	Elementary School	1050 Second Avenue, 94606
LAUREL ELEMENTARY SCHOOL	Elementary School	3750 Brown Avenue, 94619
LINCOLN ELEMENTARY SCHOOL	Elementary School	225 11th Street, 94607
MADISON PARK ACADEMY PRIMARY	Elementary School	470 El Paseo Drive, 94603
MANZANITA COMMUNITY SCHOOL / MANZANITA SEED	Elementary School	2409 East 27th Street, 94601
MONTCLAIR ELEMENTARY	Elementary School	1757 Mountain Boulevard, 94611
NEW HIGHLAND ACADEMY / RISE COMMUNITY SCHOOL	Elementary School	8521 A Street, 94621
PRESCOTT ELEMENTARY SCHOOL	Elementary School	920 Campbell Street, 94607
BRET HARTE MIDDLE SCHOOL	Secondary	3700 Coolidge Avenue, 94602
CASTLEMONT HIGH SCHOOL / RUDSDALE NEWCOMER	Secondary	8601 MacArthur Boulevard, 94605
CLAREMONT MIDDLE SCHOOL	Secondary	5750 College Avenue, 94618
COLISEUM COLLEGE PREP ACADEMY	Secondary	1390 66th Avenue, 94621
EDNA BREWER MIDDLE SCHOOL	Secondary	3748 13th Avenue, 94610
ELMHURST UNITED	Secondary	1800 98th Avenue, 94603
FREMONT HIGH SCHOOL	Secondary	4610 Foothill Boulevard, 94601
FRICK IMPACT ACADEMY	Secondary	2845 64th Avenue, 94605
MADISON PARK ACADEMY SECONDARY	Secondary	400 Capistrano Drive, 94603
MCCLYMONDS HIGH SCHOOL	Secondary	2608 Myrtle Street, 94607
MONTERA MIDDLE SCHOOL	Secondary	5555 Ascot Drive, 94611
OAKLAND HIGH SCHOOL	Secondary	1023 MacArthur Boulevard, 94610
OAKLAND INTERNATIONAL HIGH	Secondary	4521 Webster Street, 94609
OAKLAND TECHNICAL HIGH SCHOOL	Secondary	4351 Broadway, 94611
ROOSEVELT MIDDLE SCHOOL	Secondary	1926 19th Avenue, 94606
SKYLINE HIGH SCHOOL	Secondary	12250 Skyline Boulevard, 94619
UNITED FOR SUCCESS / LIFE ACADEMY	Secondary	2101 35th Avenue, 94601
WEST OAKLAND MIDDLE SCHOOL	Secondary	991 14th Street, 94607

WESTLAKE MIDDLE SCHOOL	Secondary	2629 Harrison Street, 94612
CENTRAL WAREHOUSE	Warehouse	900 High Street, 94601
CENTRAL MANUFACTURING KITCHEN	Central Kitchen	2850 West Street, 94608

ATTACHMENT K: PROPOSER PRICING SHEET

The District intends to award one Agreement for the Scope of Services, as detailed in this RFP/Bid, to the most qualified Proposer. Proposer must bid on all items to be considered responsive. Proposers must quote prices FOB Destination to the delivery location designated by Oakland Unified School District for all transactions.

All items proposed shall comply with the U.S. Pure Food and Drug Act, California Department of Agriculture requirements, county/city laws and ordinances for their production, handling, processing, marketing, and labeling. Standard industry pack is to be provided.

Item Description & Specifications	Unit	Estimated Usage	Unit Price	Extended Delivery Price	Pack Size
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Refer to included spreadsheet with item descriptions, specifications and estimated usage for initial term.

COVID-19 clause:

Due to the crisis of the global pandemic COVID-19, some or all product(s) estimated usage amounts for the initial contract term may vary. The current operation of the Nutrition Services Department is vastly different from the past year of operation which we drew our estimations from. We are asking for flexibility in product usage due to the unknown foreseeable future of alternative operations.

In accordance with the contract documents, the undersigned propose to supply all of the product and perform all work specified in the contract documents in accordance with the proposal.

Vendor Signature _____ Date _____

Oakland Unified School District Signature _____ Date _____
(If awarding contract)

ATTACHMENT L: SAMPLE CONTRACT

AGREEMENT FOR GROCERIES

1. DEFINITIONS

- a. "District" and "OUSD" each mean the Oakland Unified School District.
- b. "Contractor" means the entity doing business with the District.
- c. "Purchaser" means a representative of the District's Nutrition Services Department.
- d. "Parties" means the District and Contractor together, and "Party" means either the District or the Contractor in the singular and depending upon the context in which the term is used.
- e. "Contract" "Agreement" and "Purchase Agreement" shall each mean this Agreement entered into between the District and the Contractor.

2. TERM; EFFECTIVE DATE; AMOUNT OF AGREEMENT

- a. The term of this Agreement shall be for the 2020-2021 fiscal year, unless terminated earlier pursuant to Section 17 (Termination). This Agreement may be extended for a two (2) additional fiscal years at the sole discretion of the District.
- b. Notwithstanding the foregoing, this Agreement shall be effective only upon execution of this Agreement by the duly authorized representatives of the Parties, and approval by the Board of Education.
- c. The dollar amount of this Agreement shall be set forth in the approved Board of Education Memo that shall be attached and incorporated into this Agreement as though fully set forth herein, once approved, and shall be based upon Contractor's bid and the pricing provisions set forth in this Agreement. It shall be the responsibility of the Contractor to ensure that the approved not-to-exceed amount of the Agreement is not exceeded. Any products or services provided in excess of said amount shall not be compensated.

3. BUDGET AND FISCAL PROVISIONS

- a. This Agreement is subject to the budget and fiscal policies, regulations and practices of the District, and Board of Education approval and appropriation of funds for this Agreement. Charges will accrue only after written authorization is provided by the District's Board of Education and proper execution of this Agreement by the parties.
- b. The amount of the District's obligation hereunder shall not at any time exceed the terms herein stated.
- c. The District has no obligation to renew this Agreement after expiration of its term. If funds are appropriated for a portion of a fiscal year, this Agreement will terminate, without penalty, at the

end of the term for which funds are appropriated.

d. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

e. This section controls against any and all other provisions of this Agreement.

4. PAYMENT FOR PRODUCTS AND SERVICES PROVIDED

a. The District agrees to pay and the Contractor agrees to accept as full payment for its performance of this Agreement, the Contractor's actual cost of the food and food supplies provided to District, as provided for in this Agreement, plus Contractor's fixed percent in accordance with the Contractor's bid price, provided however that the District's obligations under this Agreement shall not exceed the not-to-exceed amount of this Agreement approved by the Board of Education pursuant to Section 2 ("Term; Effective Date; Amount of Agreement").

b. Payment to the Contractor by the District will be made monthly in arrears for food and food supplies provided as requested by the District pursuant to this Agreement, and after receipt of properly documented invoices. Invoices submitted by Contractor must be in an invoicing form acceptable to the District pursuant to Section 46 ("Invoicing").

c. Promotional Discounts and Rebates. The District shall receive the benefit of any promotional and or quantity discounts offered to other customers by the Vendor during the Contract period if such discounts would result in a lower selling price to the District. If during the Contract period there should be a decrease in the price of the items bid, a corresponding decrease shall be made to the District for as long as the price reduction is in effect, but at no time shall the prices charged to the District exceed not-to-exceed amount of this Agreement. Manufacturers may offer rebates directly to the District as an incentive to use their products (as opposed to rebates from manufacturers to the successful bidder). The District will be the sole beneficiary of such offers.

5. CHANGE ORDERS. The District may order a change, addition, alteration, modification, or extra in the products or services herein required (hereinafter "Change"), and may order extra materials and extra work in connection with the performance of the Contract, and the Contractor must comply with such Change orders, except that if any such Change order is of such a nature as to exceed the not-to-exceed amount of the Agreement pursuant to Section 2 ("Term; Effective Date; Amount of Agreement"), no such Change shall be valid unless pursuant to a written instrument executed, approved, and certified as provided for in Section 24 ("Modification of Agreement"). It shall be the responsibility of the Contractor to ensure that the not-to-exceed amount of the Agreement, pursuant to Section 2 ("Term; Effective Date; Amount of Agreement"), is not exceeded. Any products or services provided in excess of said amount shall not be compensated.

6. PAYMENT DOES NOT IMPLY ACCEPTANCE OF PRODUCTS. No payment shall in any way lessen the liability of Contractor to remedy or replace unsatisfactory work, service, products, equipment, or materials, if the unsatisfactory character of such work, service, products, equipment or materials was not detected at the time of payment. Service, products, materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by the District and in such case must be remedied or replaced by Contractor without delay at no additional cost to the District. Nothing in this

Section shall preclude, limit, or waive any other remedy or remedies available to the District.

7. TAXES. The District is exempt from federal excise tax except on articles for resale. Contractor will enter state and local sales or use tax, and excise tax if applicable on invoices, but neither should be included in any invoice presented for payment. Payment of any taxes, including California Sales and Use Taxes, levied upon this Contract, the transaction, or the services delivered pursuant hereto, shall be the obligation of the Contractor and at no additional cost to the District.

8. SUBCONTRACTING. The Contractor is permitted to subcontract the delivery of food and food supplies from Contractor's facility to the designated District delivery locations under this Contract, as detailed in "Table A – Oakland Unified School District School and Delivery List". If the Contractor will in fact subcontract this portion of this Contract, Contractor shall ensure that its subcontractor shall comply with all applicable requirements of this Contract including but not limited to Section 14 ("Insurance"), Section 40 ("Criminal Background Check; Subsequent Arrest; Tuberculosis Testing"), Section 48 ("Personnel/Vehicles"), and Section 49 ("Facilities"). Other than the permitted subcontracting detailed immediately above in this Section, the Contractor is prohibited from subcontracting this Contract or any services provided pursuant to this Contract unless such subcontracting is agreed to in writing and executed and approved in the same manner as this Contract. No Party on the basis of this Contract shall in any way contract on behalf of or in the name of the other Party of this Contract, and violation of this provision shall confer no rights on any Party and any action taken shall be void.

9. ASSIGNMENT.

a. The Contractor shall not assign or transfer by operation or law or otherwise any or all of its rights, including the right to receive payment, burdens, duties or obligations without the prior written consent of the District's Purchaser. The District's consent shall be by resolution of the Board of Education.

b. Any assignment of the Contract by the Contractor with the approval of the District shall be subject to the terms and conditions hereof and to the rights of the District contained in this Contract. No transfer or assignment of the Contract by the Contractor shall release the Contractor from its obligations hereunder.

10. CONSULTATION SERVICES.

a. The Contractor agrees to act as a consultant to the District on matters concerning routine organization and operations related to this Agreement at no additional cost to the District.

b. Any interest of the Contractor in studies, reports, memoranda, computation sheets or other documents prepared by the Contractor in connection with services to be performed under this Agreement shall become the property of and will be transmitted to the District. However, the Contractor may retain and use copies for reference and as documentation of its experience and capabilities, but only to the extent Contractor's use does not violate Section 22 of this Agreement ("Proprietary or Confidential Information of the District").

11. COVID-19. Through its execution of this Agreement, Contractor declares that it is able to meet its obligations and perform the Services required pursuant to this Agreement in accordance with any

shelter-in-place (or similar) order or curfew (or similar) order (“Orders”) issued by local or state authorities and with any social distancing/hygiene (or similar) requirements.

- a. To the extent that Contractor provides Services in person and consistent with the requirements of Paragraph 46 (Invoicing), Contractor agrees to include additional information in its invoices as required by OUSD if any Orders are issued by local or state authorities that would prevent Contractor from providing Services in person.
- b. Contractor agrees to report to District within twelve hours if Contractor or any employee, subcontractor, agent, or representative of Contractor tests positive for COVID-19.
- c. Contractor agrees to immediately adhere to and follow any OUSD directives regards health and safety protocols including, but not limited to, providing OUSD with information regarding possible exposure of OUSD employees to Contractor or any employee, subcontractor, agent, or representative of Contractor and information necessary to perform contact tracing.
- d. Contractor shall bear all costs of compliance with this Paragraph, including but not limited to those imposed by this Agreement.

12. **FORCE MAJEURE CLAUSE.** The Contractor will be excused from performance hereunder during the time and to the extent that they are prevented from obtaining or performing the service by an act of God, fire, commandeering of materials and equipment, products, plants or facilities by the Federal or State Government. Satisfactory evidence must be presented to the District demonstrating that the non-performance was not due to the fault or negligence of the Contractor and could not have been avoided by the Contractor.

13. **DISASTER RECOVERY.** Contractor acknowledges that in the event of a major catastrophe such as an earthquake, pandemic, etc., the District will receive priority service over non-governmental users. In the event of a major disaster, in coordination with the District, the Contractor will fulfill the obligations of this Agreement to the extent requested by the District and feasible under the circumstances, in the estimation of the District in consultation with the Contractor.

14. **INSURANCE.** Without in any way limiting Contractor’s liability pursuant to the “Indemnification” section of this Agreement, prior to award, Contractor shall procure and maintain during the full term of this Agreement, at the Contractor’s expense, insurance acceptable to the District and as follows:

i. Commercial General Liability Insurance with limits not less than \$1,000,000 (one million dollars) each occurrence Combined Single Limit for Bodily Injury and Property Damage (including coverage for claims of sexual abuse and molestation). If sexual abuse and molestation coverage carries a sub-limit, that limit must be identified and not less than \$500,000 per occurrence.

ii. Automobile Liability Insurance with limits not less than \$250,000 per person and \$500,000 per occurrence for bodily injury liability and \$100,000 for property damage liability is required on each vehicle owned, non-owned, or hired to be used in conjunction with the awarded contract.

iii. Workers’ Compensation Insurance, with Employer’s Liability

limits not less than \$1,000,000 (one million dollars) each accident.

b. Commercial General Liability and Business Automobile Liability policies must provide the following:

i. Name as Additional Insured "The Oakland Unified School District, its Board, officers and employees."

ii. That such policies are primary insurance to any other insurance available the Additional Insured, with respect to any claims arising out of this Agreement and that such policies apply separately to each insured against who claim is made or suit is brought.

c. All policies shall provide thirty (30) days advance written notice to the District of cancellation, nonrenewal or reduction in coverage to the following office:

Oakland Unified School District
Attn: Risk Management
1000 Broadway, Suite 440
Oakland, CA 94607

d. If any policies are written on a claims-made form, Contractor agrees to maintain such coverage continuously throughout the term of this Agreement and, without lapse, for the period of this Agreement, such that should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered.

e. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs are included in such general annual aggregate limit, such annual aggregate limit shall be double the occurrence or claims limits specified above.

f. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the District receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the District may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

g. Before commencing any operations under this Agreement, Contractor must provide the District with the certificates of insurance, an endorsement showing the additional insured policy, all with insurers satisfactory to the District, evidencing all coverage set forth above, and shall furnish complete copies of policies promptly upon the District's request. Contractor also understands and agrees that the District may withhold payment for products / services performed for any violations of the insurance provisions of this Agreement.

h. Approval of the insurance by the District shall not relieve or decrease the liability of Contractor hereunder.

15. FAILURE TO DELIVER. When Contractor fails to deliver an article or service of the quality, in the manner or within the time called for in the Contract, such article or service may be bought from any source by the Purchaser and if a greater price than that named in the Contract be paid for such article or service the excess price will be charged to and collected from the Contractor or sureties on Contractor's bond if bond has been required; or the District may terminate the Contract for default; or the District may return deliveries made and receive a refund. Nothing in this Section shall preclude, limit, or waive any other remedy or remedies available to the District.

16. CONTRACTOR DEFAULT; REMEDIES. If the Contractor fails to fulfill its obligations under this Contract, whether or not said obligations are specified in this Section, such failure shall constitute an event of default. On or after any event of default, District shall have the right to exercise its legal and equitable remedies, including without limitation, the right to: (a) seek specific performance of all or any part of this Contract, (a) terminate this Contract at no cost to District in accordance with Section 17 ("Termination") herein; or (c) exercise any other legal or equitable remedy. In addition, District shall have the right (but no obligation) to cure (or cause to be cured) on behalf of the Contractor any event of default. Contractor shall pay to District on demand all costs and expenses incurred by District in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. District shall have the right to offset from any amounts due to Contractor under this Contract or any other contract between District and Contractor all damages, losses, costs or expenses incurred by District as a result of such event of default and any liquidated damages due from Contractor pursuant to the terms of this Contract or any other contract between District and Contractor. Any such offset by District will not constitute a waiver of any other remedies the District may have against Contractor for financial injury or otherwise. All remedies provided for in this Contract may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

17. TERMINATION.

a. In the event of Contractor default pursuant to Section 16 ("Contractor Default; Remedies") of this Contract, wherein Contractor fails to perform any of its obligations under this Contract, in addition to any other remedies available to the District, the District through the Purchaser may terminate this Agreement, and all of the Contractor's rights hereunder ended. Termination shall be effective ten (10) days after Contractor's receipt of written notice of termination from the District delivered pursuant to Section 41 ("Notice to the Parties"). No new work will be undertaken, and no new deliveries will be made, as of the effective date of termination. In the event of termination for cause, the Contractor shall be paid for those services performed under this Contract to the satisfaction of the District up to the effective date of the termination. . However, pursuant to Section 16 ("Contractor Default; Remedies") herein, District may offset from any such amounts due Contractor any costs to District arising from Contractor's default and may otherwise demand payment from Contractor of such costs.

b. The District may terminate this Contract in whole or in part for District's convenience and without cause at any time by giving Contractor thirty (30) days written notice of such termination. The notice shall specify the date on which termination shall become effective. In no case shall the termination become effective in fewer than thirty (30) days from the date that the notice is deemed received pursuant to Section 41 ("Notice to the Parties"). In event of termination for convenience,

Contractor will be paid for those services performed, or deliveries made, pursuant to this Contract and to satisfaction of District up to the specified date of termination. In no event will District be liable for costs incurred by Contractor after the specified date termination. Such non recoverable costs include, but are not limited to, anticipated profits on this Contract, post-termination employee salaries, post-termination administrative expenses, or any other costs which is not reasonable or authorized under this Section. This Section shall not prevent Contractor from recovering costs necessarily incurred in discontinuing further work, or canceling further deliveries, under the Contract after receipt of the termination notice.

18. INDEMNIFICATION.

a. Contractor shall indemnify and hold harmless the District, its Board, officers, employees and agents from, and, if requested, shall defend them against any and all claims, demands, liabilities, obligations, losses, damages, judgments, costs or expenses (including legal fees, consultants and costs of investigation) (collectively "Claim"), whether actual or alleged, arising directly or indirectly from or in any way connected with the performance of this Agreement, including but not limited to any Claim for personal injury, death, property damage, loss of profits, infringement upon intellectual property rights, failure to comply with the criminal background check requirements of California Education Code Section 45125.1 and/or disclosure of confidential information which might be obtained by Contractor or Contractor's agents or employees during the performance of this Agreement.

b. Notwithstanding the foregoing, Contractor shall have no obligation under this Section with respect to any Claim that is caused by the active negligence or willful misconduct of District and which is not contributed to by any act or omission (including any failure to perform any duty imposed by law) by Contractor or Contractor's agents or employees.

19. LIABILITY OF DISTRICT. District's payment obligations under this agreement shall be limited to the payment of the compensation provided under this contract. Notwithstanding any other provision of this agreement, in no event shall the District be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect, or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this agreement or the services performed in connection with this agreement.

20. INDEPENDENT CONTRACTOR. Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and not an employee of the District. Contractor shall be wholly responsible for the manner in which it performs the services required by District under this Contract. Contractor or any agent or employee of Contractor shall not have employee status with the District, nor be entitled to participate in any plans, arrangements, or distributions by District pertaining to or in connection with any retirement, health, or other benefits that District may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including but not limited to, FICA, income tax withholdings, unemployment compensation, insurance and other similar responsibilities related to Contractor's performing services and work, or any agents or employee of Contractor providing same. Nothing contained in this Agreement shall be construed as creating an employment or agency relationship between the District and Contractor or any agent or

employee of Contractor. Any terms in this Contract referring to direction from District shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. District does not retain the right to control the means or the method by which Contractor performs work under this Agreement. If any governmental authority should, nevertheless, determine that Contractor is an employee, then the District's payment obligations hereunder shall be reduced so that the aggregate amount of payments directly to Contractor and to the applicable governmental authority does not exceed the maximum amount of compensation specified in this Agreement. Contractor shall refund any amounts necessary to effect such reduction.

21. CONFLICT OF INTEREST.

- a. Contractor understands and certifies that it does not know of any facts which constitute a violation of the California Political Reform Act, which states in part that "[N]o public official at any level of state or local government shall make, participate in making or in any way attempt to use his/her official position to influence a governmental decision in which he/she knows or has reason to know that he/she has a financial interest." (Cal. Govt. Code Section 87100 *et seq.*) Furthermore, Contractor certifies that no such current or former Board member or employee will derive any compensation, directly or indirectly, from this Agreement.
- b. Contractor also hereby certifies that to its knowledge, no current Board member or employee of the Oakland Unified School District, and no one who has been a Board member or an employee of the District within the last two years, has influenced or sought to influence the awarding of this Agreement to Contractor, except as allowed under his/her official duties. Contractor understands that any violation of this Section shall make the Agreement voidable by the District.

22. PROPRIETARY AND CONFIDENTIAL INFORMATION OF THE DISTRICT.

- a. In connection with this Agreement, the Contractor may have access to private or confidential information which may be owned or controlled by the District and that such information may contain proprietary details, the disclosure of which to third parties will be damaging to the District, its employees or students. Contractor also understands and agrees that the disclosure of such information may violate state and/or federal law and may subject the Contractor to civil liability. Consequently, Contractor agrees that all information disclosed by the District to the Contractor shall be held in strict confidence and used only in performance of the Agreement, unless disclosure is required by law or court order. Contractor shall exercise the same standard of care to protect such information as is used to protect its own proprietary data.
- b. Contractor shall comply at all times with the requirements of the Family Educational Records Privacy Act ("FERPA") and relevant state law regarding the confidentiality and handling of confidential student information, including but not limited to California Education Code Sections 49073 and sequential. Contractor shall only access personally identifiable student information pursuant to parent consent, legitimate educational interest pursuant to the performance of this Contract, and/or other applicable provisions federal and state law allowing access to personally identifiable student information. Contractor shall not re-disclose personally identifiable student information unless pursuant to federal and state law. Contractor shall not use such student information or data for any purpose other than the District's purposes as specified in this

Agreement. Failure to comply with this Section may constitute a material breach if so deemed by the District.

23. ENTIRE CONTRACT; SEVERABILITY. All of the agreements between the Parties are included herein and no warranties, expressed or implied, representations, promises or statements have been made by either Party except as expressly provided for herein. Should the application of any provision of this Contract to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of the other provisions of this Contract shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the Parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.

24. MODIFICATION OF AGREEMENT.

- a. No oral statement of any person whatsoever shall in any manner or degree modify, alter, or otherwise affect the terms of this Agreement.
- b. The parties may amend this Agreement in writing by mutual consent, provided that such writing shall only be effective upon execution by the duly authorized representatives of the Parties and approval by the Board of Education.

25. CONTRACT INTERPRETATION; CHOICE OF LAW/VENUE.

- a. Should any questions arise as to the meaning and intent of this Agreement, the matter shall be referred to the Purchaser who shall decide the true meaning and intent of the Contract.
- b. This Contract shall be deemed to be made in, and shall be construed in accordance with the laws of the State of California. The Alameda County Superior Court shall have jurisdiction over any litigation initiated to enforce or interpret this Agreement.

26. SUBMITTING FALSE CLAIMS; MONETARY PENALTIES. Pursuant to Government Code §12650 et. seq., any person, including a contractor, subcontractor or a consultant, who submits a false claim, shall be liable to the District for three times the amount of damages which the District sustains because of the false claim. A person who commits a false claim act shall also be liable to the District for the costs of a civil action brought to recover any of those penalties or damages, and may be liable to the District for a civil penalty of up to ten thousand dollars (\$10,000) for each false claim. A person will be deemed to have submitted a false claim to the District if the person:

- a. knowingly presents or causes to be presented to an officer or employee of the District, a false claim for payment or approval;
- b. knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the District;
- c. conspires to defraud the District by getting a false claim allowed or paid by the District;
- d. has possession, custody, or control of public property or money used or to be used by the District and knowingly delivers or causes to be delivered less property than the amount for which

the person receives a certificate or receipt;

e. is authorized to make or deliver a document certifying receipt of property used or to be used by the District and knowingly makes or delivers a receipt that falsely represents the property used or to be used;

f. knowingly buys, or receives as a pledge of an obligation or debt, public property from any person who lawfully may not sell or pledge the property;

g. knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the District; or

h. is a beneficiary of an inadvertent submission of a false claim to the District, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the District within a reasonable time after discovery of the false claim.

27. INCIDENTAL AND CONSEQUENTIAL DAMAGES. The Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions, or from the acts or omissions of its permitted subcontractor pursuant to Section 8 ("Subcontracting"). Nothing in this Section shall constitute a waiver or limitation of any rights that the District may have under applicable law.

28. NON-DISCRIMINATION; COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT.

a. Contractor agrees that it shall not discriminate on the basis of sex, race, religious creed, national origin, age, marital status, sexual orientation, gender identity, AIDS/ARC/HIV status, or disability, in its performance under this Contract.

b. Contractor acknowledges that, pursuant to the Americans Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agree that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

29. LAWS AND REGULATIONS. In the performance of this Contract, Contractor shall keep itself informed of, and at all times comply with, all applicable Federal, State, and Local laws, ordinances, regulations and other legal requirements that are in effect as of the commencement of the term of this Agreement and as may be amended from time to time, including but not limited to the Safety Orders of the California Division of Industrial Safety. It is the responsibility of the Contractor to obtain, at its sole expense, any required permit(s) and license(s).

30. DAMAGES CAUSED BY CONTRACTOR. Any damage to the District's property arising from the acts or omissions of the Contractor or of Contractor's permitted subcontractor ("Subcontracting") related to the performance of this Agreement shall be repaired or replaced at Contractor's expense. Corrections shall be

made within 72 hours of the incident or the District may make the repairs and back-charge the Contractor.

31. BANKRUPTCY.

a. In the event that either Party shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then at the option of the other Party this Agreement shall terminate and be of no further force and effect, and any property or rights of such other Party, tangible or intangible, shall forthwith be returned to it.

b. The Contractor shall notify the District within ten (10) days of filing a bankruptcy petition under the Federal Bankruptcy Act.

32. SUSPENSION AND DEBARMENT CERTIFICATION. Through its execution of this Agreement, Contractor certifies to the best of its knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List (<https://www.sam.gov/>).

33. SECTION HEADINGS. The Section headings contained herein are for convenience of reference and are not intended to define or limit the scope of any provision of the Contract.

34. NON-WAIVER OF RIGHTS. The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

35. QUALIFIED PERSONNEL. Work under this Agreement shall be performed only by competent personnel under the supervision of and/or in the employment of the Contractor. The Contractor will conform to the District's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at District's request, and shall be supervised by the Contractor. To the extent that Contractor staff member's work performance is unsatisfactory, the District reserves the right to request substitution of another staff member that would take this position and perform adequately. The Contractor agrees to replace staff members who are not performing effectively. Verification of staff members' qualifications should be made available to the District upon request.

36. DRUG FREE WORKPLACE POLICY. No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on OUSD property. No students, staff, visitors, contractors, or subcontractors are to use controlled substances, alcohol or tobacco on these sites. Any violation of this prohibition by the Contractor, its employees, agents or assigns shall be deemed a material breach of contract.

37. RESPONSIBILITY FOR EQUIPMENT. The District shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by the Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to the Contractor by the District.

The acceptance or use of such equipment by the Contractor or any of its employees shall be construed to mean that the Contractor accepts full responsibility for and agrees to exonerate, indemnify, defend and save harmless the District from and against any and all claims for any damage or injury of any type arising from the use, misuse or failure of such equipment, whether such damage be to the Contractor, its employees, District employees or third parties, or to property belong to any of the above.

38. **AUDIT AND INSPECTION OF RECORDS.** The Contractor agrees to maintain and make available to the District, during business hours, accurate books and accounting records including computer records relative to its activities under this Agreement. The Contractor will permit the District to audit, examine and make copies and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. The Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject of this Agreement shall have the same rights conferred upon the District by this Agreement.

39. **CONTRACTOR AUDIT PROCEDURES.** The District has the discretion to make price verification audits of the purchases made during the Contract year. The purpose of these verifications is to ascertain that the Contractor's actual markup does not exceed that quoted in this bid. The Contractor will furnish verification of costs for the products to be price verified. The District will give the Contractor fifteen (15) days' notice for each verification audit. The period of time for which price verification can be made will not exceed 24 months prior to the audit.

40. **CRIMINAL BACKGROUND CHECK; SUBSEQUENT ARREST; TUBERCULOSIS TESTING.**

Criminal Background Check

- i. Contractor is required to comply with the criminal background check provisions of California Education Code ("EC") section 45125.1. Contractor will conduct criminal background checks with the California Department of Justice (CDOJ) for all Contractor employees, agents, and volunteers assigned to the District, and will certify that no employees, agents, or volunteers who have been convicted of a serious or violent felony as described in EC 45125 .1 (citing 45122.1), a sexual offense as defined by EC 44010 or a controlled substance offense as described in EC 44011 (consistent with EC 45123), will have contact with District pupils pursuant to this Agreement. This prohibition does not apply to a conviction for which the employee, agent or volunteer has obtained a certificate of rehabilitation and pardon pursuant to California Penal Code Section 4852.01 et seq. for a serious or violent felony listed under EC 45122.1.
- ii. Contractor will provide the District with a list of all employees, agents and volunteers who have cleared the criminal background check, as detailed above, and who will have contact with District pupils pursuant to this Agreement and specify to which sites they will be assigned.
- iii. Contractor will be responsible for the costs of the criminal background checks.
- iv. As written certification of its compliance with this Section, Contractor will complete and

submit the Criminal Background Check/ Tuberculosis Clearance Certification Form (“CBC/TB form”).

- v. For any Contractor employees, agents or volunteers that Contractor hires/ assigns subsequent to Contractor’s initial submission of the CBC/TB form to District, Contractor will conduct background checks and submit additional CBC/TB forms to District, as required.
- vi. The criminal background check requirement applies only to Contractor’s employees, agents or volunteers will have more than limited contact with students. Contractor’s employees, agents or volunteers who will have no contact or only limited contact with students are not required to meet criminal background check requirements. If Contractor asserts that all of its employees, agents or volunteers will have no contact with District students or only limited contact with District students, the District’s Administrator supervising this Agreement has the responsibility to make a reasonable determination of whether Contractor, its employees, agents or volunteers will have only limited contact with students.

Subsequent Arrest Notification

- i. In addition to the initial criminal background check, Contractor will obtain from the CDOJ subsequent arrest notification to monitor future arrests of employees, agents and volunteers who will have contact with students, and is responsible for all costs associated with these subsequent notifications.
- ii. Upon receipt of notice that any of its employees, agents, or volunteers that have contact with students has been arrested or convicted of a serious or violent felony as described in EC 45125 .1 (citing 45122.1), a sexual offense as defined by EC 44010 or a controlled substance offense as described in EC 44011 (consistent with EC 45123), Contractor will immediately prohibit such employee, agent, or volunteer from having any contact with pupils, and will immediately notify the District.

Tuberculosis Testing

- i. Contractor agrees that all employees, agents or volunteers whose functions require frequent or prolonged contact with students will complete tuberculosis testing the same as the testing that is described in California Education Code Section 49406. The examination shall consist of an approved intradermal tuberculin test, which, if positive, shall be followed by an x-ray of the lungs. Thereafter, the Contractor shall ensure that its employees, agents or volunteers who are skin test negative have undergone the foregoing examination at least once every four (4) years if the Contractor is still rendering services to the District pursuant to this Contract, and such employees, agents, and volunteers shall be listed by name on the Criminal Background Check/ Tuberculosis Clearance Written Certification Form with a notation of the date of each individual’s testing/clearance. Contractor shall maintain on file in its offices documentation of tuberculosis clearance for its employees, agents, and volunteers who shall have more than limited contact with students under this Contract.
- ii. The Contractor shall be responsible for the costs of the examination.

- iii. The District shall be the final arbiter of what constitutes “limited contact”.
- iv. The District may also, in its sole discretion, waive the provisions of this section for a specified time period if it determines that emergency or exceptional circumstances exist which threaten student or staff safety if the work is delayed pending clearance.
- v. Contractor must complete, sign and submit the Criminal Background Check/ Tuberculosis Clearance Written Certification Form as written certification of its full compliance with the provisions of this Section.

41. NOTICE TO THE PARTIES. District and Contractor understand and agree that notice to the Parties shall be as follows:

- a. Except as otherwise expressly provided herein, any notices given under this Agreement shall be effective only if in writing and given by delivering the notice in person, by sending it via first class mail or certified mail with a return receipt requested, or via nationally-recognized overnight courier that guarantees next day delivery and provides a receipt therefore, with postage prepaid, addressed as in Subsection D of this Section, below.
- b. Notices herein shall be deemed to have been received two (2) business days after the date when they shall have been mailed if sent by first class mail, certified mail or overnight courier, or upon the date personal delivery is made.
- c. Either party may change the address to which notice is to be sent by giving written notice thereof to the other party.
- d. Notice to the Parties shall be addressed as follows (or such alternative address as may be provided in writing):

NOTICE TO THE DISTRICT:

Nutrition Services Department

Attn: Irene Reynolds

2850 West Street

Oakland, CA 94608

EMAIL ADDRESS Irene.reynolds@ousd.org

NOTICE TO THE CONTRACTOR:

CONTRACTOR

CONTACT NAME

STREET ADDRESS

CITY, STATE, ZIP

TELEPHONE/FAX

EMAIL ADDRESS

42. CIVIL RIGHTS ASSURANCES. In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, religious creed, disability, age, political beliefs, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA. Persons with disabilities who require alternative means of communication for program information (e.g. Braille, large print, audiotape, American Sign Language, etc.), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program complaint of discrimination, complete the USDA Program Discrimination Complaint Form, (AD-3027) found online at: http://www.ascr.usda.gov/complaint_filing_cust.html, and at any USDA office, or

write a letter addressed to USDA and provide in the letter all of the information requested in the form.

To request a copy of the complaint form, call (866) 632-9992.

Submit your completed form or letter to USDA by:

(1) mail: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights

1400 Independence Avenue, SW

Washington, D.C. 20250-9410;

(2) fax: (202) 690-7442; or

(3) email: program.intake@usda.gov.

This institution is an equal opportunity provider.

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

44. BYRD ANTI-LOBBYING AMENDMENT. Title 31 of the United States Code section 1352 requires that Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non- Federal award.

45. DELIVERIES TO DISTRICT. Food items should be clearly labeled and palletized by school name. The Contractor shall be responsible for delivery to all school locations designated by the District (F.O.B. Destination). The number and location of delivery sites is subject to change. The District will provide Contractor with a schedule of deliveries. The Contractor shall furnish all labor, materials, costs incurred and equipment necessary for the delivery of items specified herein to the District's facilities on a scheduled basis. All work shall be performed in a thorough and workman-like manner under the administration of, and to the approval of the District. All refrigerated goods shall be delivered in properly insulated refrigeration equipment, maintaining goods at or below forty (40) degrees Fahrenheit; frozen goods should be maintained at or below zero (0) degrees Fahrenheit. Deliveries are to be made inside the building to the location(s) indicated. Two copies of an itemized delivery form will be left with the site representative. Shortages, damaged and unacceptable items will be noted on the delivery slip. Items not accepted must not be billed to the District. The District reserves the right to reject any product. The Contractor shall notify SNS at least 72 hours prior to the regular delivery of any unfilled order to allow sufficient time to order a substitute item. Emergency next day deliveries may occasionally be required.

46. INVOICES. Invoices shall be summarized monthly by school in a format approved by the District representative. Payment terms shall be net sixty (60) days. Summary items must be available to the District no later than the 10th working day of the month following delivery. A three-part copy of the invoice shall be furnished at the time of delivery with the name of the District and school clearly stated. The person receiving the material must sign the invoice.

The invoices shall contain the following; purchase order number, site location, date, item number, SNS item number, description, commodity designation, quantity, price and extended totals. Failure to provide the above information may result in delay of payment.

Invoices shall be matched to SNS purchase order by item, quantities and case price. For any invoice that does not match, SNS will correct the invoice based on the receiving documents at time of delivery.

47. ALLOWABLE COSTS. The costs incurred by Student Nutrition Services for the benefit of school children are deemed Allowable within the National School Lunch Program. Allowable cost will be paid from the nonprofit school food service account to the Contractor net of all discounts, rebates and other applicable credits accruing to or received by the Contractor or any assignee under the contract to the extent those credits are allocable to the allowable portion of the costs billed to the school food authority. (7 CFR 210.21(f)(i)). The Contractor must separately identify for each cost submitted for payment to the school food authority the amount of that cost that is allowable (can be paid from the nonprofit school food service

account) and the amount that is unallowable (cannot be paid from the nonprofit school food service account); or that the Contractor must exclude all unallowable costs from its billing documents and certify that only allowable costs are submitted for payment and records have been established that maintain the visibility of unallowable costs, including directly associated costs in a manner suitable for contract cost determination and verification. (7 CFR 210.21(f)(A)(B)).

48. PERSONNEL; VEHICLES. Contractor shall identify at least one sales representative to assist during the life of this Contract. Contractor shall ensure that all personnel working under this Contract shall be identified by a distinctive nameplate, emblem, patch or badge displayed on the outer garment in a visible location. Contractor shall ensure that all vehicles shall have the name of the Contractor/permitted subcontract ("Subcontracting") prominently displayed and must be currently licensed throughout the term of this Contract. Contractor shall ensure that all personnel shall be qualified and properly trained to perform the work required under this Contract. Contractor shall ensure that any unusual conditions noted by any personnel providing services under this Contract (e.g. vandalism, fire, water damage) shall be reported to the District representative. The Contractor shall ensure that at all times a sufficient number of vehicles shall be furnished and maintained to perform the work of this Contract.

49. FACILITIES. Contractor shall ensure that all personnel, equipment and storage facilities used to provide the services under this Contract shall meet all federal, state, county, and city health code requirements. Proof of current compliance must be in public view at all such facilities. Upon request, the Contractor must provide documents supporting routine pest control maintenance of all facilities, both stationary and mobile, by a certified pest control operator, that will incur clean, sound and sanitary products.

50. REPORTS. The District must know the volume, cost and variety of items delivered for its food programs. Various reports will be required, at least monthly, beginning with the first full month of delivery service. Successful Contractor will be required to provide to Nutrition Services, no later than 10 working days after the close of the previous month, a computer-generated sales analysis. Sales analysis will be by school and by descending dollar amount. All reports must include locations, items purchased, aggregate quantities, year-to-date purchases quantities per item and average unit cost or case cost.

51. DOCUMENTATION. The District may require written documentation of those items, which are covered by the Child Nutrition Program. Additional information may be required, and must be provided, upon request by the District, regarding the National Labeling and Education Act (NLEA) of 1990.

52. LIMITATION OF OUSD LIABILITY. Other than as provided in this Agreement, OUSD's financial obligations under this Agreement shall be limited to the payment of the compensation described in Paragraph 8 (Compensation). Notwithstanding any other provision of this Agreement, in no event shall OUSD be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of, or in connection with, this Agreement for the services performed in connection with this Agreement.

53. AGREEMENT PUBLICLY POSTED. This Agreement, its contents, and all incorporated documents are public documents and will be made available by OUSD to the public online via the Internet.

