SOLICITATION, OFFER, AND AWARD Government of the District of Columbia	1. Caption **Produce Distribution**	Page 1 of 68 Pages 1	67

2. Contract Number	3. Solicitation Number	4. Type of Solicitation		5. Date Issued	6. Type of Market	
	GAGA-2021-R-0103		Sealed Bid (IFB)	June 15, 2021	X	Open
		X	Sealed Proposals (RFP)			Set Aside
			Other			Open with Sub-Contracting Set Aside

7. Issued By:	8. Address Offer to:
District of Columbia Public Schools (DCPS) Office of Contracts and Acquisitions 1200 First Street N.E., 9th floor Washington, D.C. 20002	dcpsoca.inquiries@k12.dc.gov.

NOTE: In sealed bid solicitations "offer" and offeror" means "bid" and "bidder"

SOLICITATION

9. Offers for furnishing the supplies and/or services in the Schedule shall be received at the place specified in Item 8 **No later than 2:00pm July 15, 2021.**

CAUTION: Late Submissions, Modifications and Withdrawals: See 27 DCMR chapters 15 & 16 as applicable. All offers are subject to all terms & conditions contained in this solicitation.

10. For Information Contact	A. Name	B. Telephone Number			C. E-mail Address
	Zahra Hashmi	Phone	202.442.5120		Zahra.hashmi@k12.dc.gov

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OFFER

12. The undersigned agrees, if this offer is accepted within 30 calendar days from the date for receipt of offers specified above to furnish any and all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified herein.

13. Discount for Prompt Payment	10 Calendar days %	20 Calendar days %	30 Calendar days %	____ Calendar days %

14. Acknowledgement of Amendments (The offeror acknowledges receipt of amendments to the SOLICITATION):	Amendment Number(s)	Date	Amendment Number	Date

15A. Name and Address of Offeror		16. Name and Title of Person Authorized to Sign Offer/Contract

15B. Telephone			☐ 15 C. Check if remittance address is different from above - Refer to Section G	17. Signature	18. Offer Date
(Area Code)	(Number)	(Ext)			

AWARD (TO BE COMPLETED BY GOVERNMENT)

19. Accepted as to Items numbered	20. Amount	21 Accounting and Appropriation Data

22. Name of Contracting Officer (Type or Print)	23. Signature of Contracting Officer (District of Columbia)	24. Award Date

SECTION B: CONTRACT TYPE, SUPPLIES OR SERVICES AND PRICE/COST

B.1 OVERVIEW

B.1.1 The District of Columbia Public Schools (DCPS), Office of Resource Strategy (ORS), Contracts and Acquisitions Division, on behalf of the Office of the Chief Operating Officer (OCOO), Food & Nutrition Services is seeking a Produce Distributing Company contractor to furnish produce items and other food service related products and delivery to school sites participating in the Child Nutrition Programs including but not limited to the National School Breakfast (SBP), Lunch (NSLP), After-School Snack (ASSP), Fresh Fruit and Vegetable (FFVP), Summer Food Service Program (SFSP), and the Child and Adult Care Food At-Risk Supper Programs (CACFP), established by the United States Department of Agriculture code of Federal regulations, the DC Healthy Schools Act of 2010 (and amendments) and the DC Healthy Students Amendment Act of 2018 sets forth the terms and conditions applicable to the proposed procurement. The successful offeror shall deliver in accordance with the menu requirements for each applicable program.

B.1.2 The purpose of this solicitation is to award a contract to provide groceries and other food service supplies related to meals served at 7 sites: Excel Academy, Bard High School Early College, Burroughs Elementary, Langdon Elementary, Langley Elementary, McKinley Education Campus and Dunbar High School, which shall also be recognized as the Ordering Agencies.

B.1.3 The District will award one Requirements Contract with fixed unit price in accordance with 27 DCMR Chapter 24, and as allowable by USDA, and Guidelines and Federal Procurement requirements. DCPS will not pay any fees, costs, or charges not clearly identified in the Contractor's proposal and/or any subsequent executed contracts between Contractor and DCPS.

B.1.4 DCPS must approve all product substitutions 24-hours prior to delivery.

B.1.5 DCPS agrees to provide the Contractor with the pricing sheet including the estimated quantities for the Base Year, Option Year One, Option Year Two, Option Year Three, and Option Year Four of the contract starting August 8, 2021.

B.1.6 The Contractor must identify any items from the product listing that is not in compliance with the “Buy American” clause (non-domestic product (s)) – 7 CFR.21021(d), and Memo SP 38-2017, see attachments J.15 and J.16.

B.1.7 DCPS must approve all non-domestic product(s) at least 24-hours prior to delivery.

B.1.8 DCPS reserves the right to add additional points of delivery and produce items.

B.1.9 The award will be made in accordance with the criteria set forth in this solicitation. DCPS contemplates to award a Requirements Contract, where the District will purchase its requirements of the articles or services described in the contract awarded. In the event of any assignment, the contractor shall remain liable to DCPS for the performance of all its obligations under the contract.

B.1.10 The Contractor agrees to meet all obligations under the awarded contract.

B.2 **FOOD SPECIFICATIONS**

As Applicable: Written description of a food that includes specific standards relating to the quality, appearance, and delivery of the product: conditions under which it is to be grown or produced, packed, stored and transported; explicit descriptions regarding its size, weight, color, and nutrient content; details of inspection process; and specific packing and labeling requirements.

B.2.1 Meat / Meat Alternate

B.2.1.1 Fully cooked, unless otherwise specified

B.2.1.2 Beef – USDA Grade or better, 80% lean or leaner.

B.2.1.3 Poultry – US Government Grade A

B.2.1.4 Seafood – top U.S. Grade A

B.2.1.5 Eggs – USDA Grade A

B.2.1.6 CN Label, specifications, and nutritional analysis must be provided

B.2.2 Fruit Juice

B.2.2.1 100% fruit or vegetable juice

B.2.2.2 Apple, Grape, Orange, Pineapple, Berry

B.2.2.3 Fortified with or without calcium

B.2.2.4 Equivalent to ½ cup fruit serving

B.2.2.5 May be served with breakfast, lunch, snack, or supper

2.2.2.6 Specification and nutritional analysis must be provided

B.2.3 Dairy

B.2.3.1 No whole or 2% milk will be served at any time

B.2.3.2 A variety of milk fats (skim and 1% unflavored) must be offered with meals.

B.2.3.3 Vendors should have the ability to offer lactose-free and/or soy milk based on student needs.

B.2.3.4 Vitamin A and D levels as specified by FDA.

**All applicable food items must meet the 0 trans-fat and USDA sodium requirements for all programs.

B.3 DEFINITIONS

These terms when used in this RFP have the following meanings:

a. "CN Label" means the Child Nutrition Labeling Program which is a voluntary Federal labeling program administered by the Food and Nutrition Service (FNS) in conjunction with the Food Safety and Inspection Service (FSIS), and Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture, and National Marine Fisheries Service of the U.S. Department of Commerce (USDC) for the Child Nutrition Programs. The program requires an evaluation of a product's formulation by FNS to determine its contribution toward the meal pattern requirements. Contractor shall provide the Child Nutrition (CN) Label or Certified Nutritional Analysis on all protein sources. Upon award of the contract, the contractor shall supply to the SFA the ingredient specifications and nutrient analysis of all items that are to be processed. The nutrient analysis shall indicate the portion size by weight and nutrient contribution as prescribed in accordance with USDA requirements for each food component provided. Also, the name of the software system used to prepare the analysis shall be included;

b. "Commodities" means USDA and or DOD commodities;

c. "Commodity Entitlement" means the total value of USDA commodities available to eligible schools based on prior year participation in NSLP or an estimate provided by the State Agency;

d. "Contractor" means a successful offeror who is awarded a contract by an District under the Child Nutrition Programs including but not limited to the National School Breakfast and Lunch Programs and the Child and Adult Care Food At-Risk Supper Program, under the U. S. Department of Agriculture;

e. "DCPS" means District of Columbia Public Schools;

f. "DOD Commodities" means the fresh fruits and vegetables provided by USDA and available to eligible schools participating in the NSLP program by the Department of Defense Supply Center, Philadelphia;

g. "DOD Entitlement" means the total value of DOD fresh fruits and vegetable available to eligible schools based on prior year participation in NSLP or an estimate provided by the State Agency;

h. "End Product" means a food product that contains processed USDA donated foods;

i. "Farm to School" – Farm to school (FTS) connects schools (k-12) and local farms with the objectives of serving healthy meals in schools; improving student nutrition; providing agriculture, health, and nutrition education opportunities; and supporting local and regional farmers;

j. "FDA" – Food and Drug Administration;

k. "FFVP" means the Fresh Fruit and Vegetable Program that provides all children in participating schools with a variety of free fresh fruits and vegetables throughout the school day;

l. "FNS" means District of Columbia Public Schools Food and Nutrition Services;

m. "Food systems curriculum and experiential learning opportunities such as school gardens, farm tours, farmer in the classroom sessions, culinary education, educational sessions for parents and community members, and visits to farmers' markets;

n. "FSIS" – USDA Food Safety and Inspection Service;

o. "Geographic Preference" applies when procuring unprocessed locally grown or locally raised agricultural products in Delaware, the District of Columbia, Maryland, New Jersey, North Carolina, Pennsylvania, Virginia, and West Virginia;

p. "HACCP" – Hazard Analysis and Critical Control Points (systematic preventive approach to food safety);

q. "HSA" means the Healthy School Act, D.C. Law 18-209 passed by the City Council for the District of Columbia to establish local nutritional standards for school meals;

r. "District" means the Child Nutrition Programs including but not limited to the National School Breakfast and Lunch Programs and the Child and Adult Care Food At-Risk Supper Program District that issues this RFP;

s. "LEA" means Local Education Agency;

t. "Local Products in School Meals – breakfast, lunch, after-school snacks; and in classroom snacks, taste tests, and educational tools;

u. "Locally-grown" means from a grower in Delaware, the District of Columbia, Maryland, New Jersey, North Carolina, Pennsylvania, Virginia, and West Virginia;

v. "Offer" means an offer to perform the work described in the Request for Proposal (RFP)/Invitation for Offer (IFB) at the fixed unit price specified in accordance with the terms and conditions of the solicitation;

w. "Offeror" means a food service vendor submitting an offer in response to this Request for Proposal/Offer;

x. "PFS" means Product Formulation Statement;

y. "Request for Proposal", hereafter referred to as RFP, means the document used in soliciting offers through the formal advertising method of procurement;

z. "SFA" means School Food Authority;

aa. "Unitized meal" means an individual pre-portioned meal consisting of a combination of foods meeting the complete meal requirements, delivered as a unit and served as a unit, with or without milk;

bb. "Unprocessed" means foods that are nearest their whole, raw, and natural state, and contain no artificial flavors or color, synthetic ingredients, chemical preservatives, high fructose corn syrup, or dyes;

cc. "USDA Commodity Value" refers to the stated case value of USDA commodity foods as of the November 15 commodity file report as of the previous year;

dd. "USDA FNS" – Food and Nutrition Services (USDA);

ee. "USDA Foods (Commodities)" means foods purchased by the United States Department of Agriculture;

"Value Pass Through" means the act of crediting the value of USDA Foods contained in an end-product to an eligible SFA.

B.4 REQUIREMENTS BY YEAR

B.4.1 Base Year Requirements: August 8, 2021 to August 7, 2022

B.4.1.1 Item pricing is in Section B, as listed per Attachment J.12.

B.4.1.2 Prices stipulated in Proposal shall remain in effect for the term of the Contract.

B.4.1.3 Contract Renewal Option – Four (4) Option Year Periods.

B.4.2 Option Year One Requirements: August 8, 2022 to August 7, 2023.

B.4.2.1 Item pricing is in Section B, as listed per Attachment J.12.

B.4.2.2 Prices stipulated in Proposal shall remain in effect for the term of the Option Year One.

B.4.2.3 Contractor seeking approval from DCPS to exercise Option Year One must provide an updated Pricing Sheet for Option Year One no later than 30 days before Option Year Exercise. Any price changes to items must comply with specifications as set forth in Section B.

B.4.2.4 Any price increases or decreases will be agreed to in writing by all Parties and new Pricing Sheets for Option Year One and will be signed by the parties and entered into agreement documents no later than time of the Option Year Exercise.

B.4.3 Option Year Two Requirements: August 8, 2023 to August 7, 2024.

B.4.3.1 Item pricing is in Section B, as listed per Attachment J.12.

B.4.3.2 Prices stipulated in Proposal shall remain in effect for the term of the Option Year Two.

B.4.3.3 Contractor seeking approval from DCPS to exercise Option Year Two must provide an updated Pricing Sheet for Option Year Two no later than 30 days before Option Year Exercise. Any price changes to items must comply with specifications as set forth in Section B.

B.4.3.4 Any price increases or decreases will be agreed to in writing by all Parties and new Pricing Sheets for Option Year Two and will be signed by the parties and entered into agreement documents no later than time of the Option Year Exercise.

B.4.4 Option Year Three Requirements: August 8, 2024 to August 7, 2025.

B.4.4.1 Item pricing is in Section B, as listed per Attachment J.12.

B.4.4.2 Prices stipulated in Proposal shall remain in effect for the term of the Option Year Three.

B.4.4.3 Contractor seeking approval from DCPS to exercise Option Year Three must provide an updated Pricing Sheet for Option Year Three no later than 30 days before Option Year Exercise. Any price changes to items must comply with specifications as set forth in Section B.

B.4.4.4 Any price increases or decreases will be agreed to in writing by all Parties and new Pricing Sheets for Option Year Three and will be signed by the parties and entered into agreement documents no later than time of the Option Year Exercise.

B.4.5 Option Year Four Requirements: August 8, 2025 to August 7, 2026.

B.4.5.1 Item pricing is in Section B, as listed per Attachment J.12.

B.4.5.2 Prices stipulated in Proposal shall remain in effect for the term of the Option Year Four.

B.4.5.3 Contractor seeking approval from DCPS to exercise Option Year Four must provide an updated Pricing Sheet for Option Year Four no later than 30 days before Option Year Exercise. Any price changes to items must comply with specifications as set forth in Section B.

B.4.5.4 Any price increases or decreases will be agreed to in writing by all Parties and new Pricing Sheets for Option Year Four and will be signed by the parties and entered into agreement documents no later than time of the Option Year Exercise.

B.5 REQUIREMENTS REGARDING PRICING, OFFERING, AND ORDERING

B.5.1 Prices on all items are outlined in Attachment J.12 and **Section B.7** to be delivered to all the schools on the designated days and times. DCPS will provide the estimated number of cases or units to be used during the contract period.

B.5.2 The **Contractor** inserted the appropriate unit price for each product as was indicated by the District to include NOI discount for commodities, any deviations or other discounts communicated from Manufacturer either negotiated by Contractor or SFA, and any associated markup for each item.

B.5.3 The Offeror shall calculate subtotal of each product by multiplying the number of portions needed per serving period times the number of anticipated serving periods in the contract period equal = Subtotal.

B.5.4 Offeror(s) shall calculate total price by aggregating all individual product costs = Total Contract Price.

B.6 REQUIREMENTS CONTRACT

The District will purchase its requirements of the articles or services included herein from the Contractor. The estimated quantities stated herein reflect the best estimates available. The estimate shall not be construed as a representation that the estimated quantity will be required or ordered, or that conditions affecting requirements will be stable. The estimated quantities shall not be construed to limit the quantities which may be ordered from the Contractor by the DCPS or to relieve the Contractor of its obligation to fill all such orders.

a) Delivery or performance shall be made only as authorized in accordance with the Ordering Clause, G.10. DCPS may issue orders requiring delivery to multiple destinations or performance at multiple locations. If DCPS urgently requires delivery before the earliest date that delivery may be specified under this contract, and if the Contractor shall not accept an order providing for the accelerated delivery, DCPS may acquire the urgently required goods or services from another source.

b) There is no limit on the number of orders that may be issued. DCPS may issue orders requiring delivery to multiple destinations or performance at multiple locations.

c) DCPS shall not be required to purchase from the contractor requirements in excess of the limit on total orders under his contract, if any.

d) DCPS may issue orders that provide for delivery to or performance at multiple destinations. DCPS may, with reasonable notice but with no less than thirty (30) day written notice to Contractor, add Districts not included in the agreement at the time of award and those Districts shall be fully incorporated into the awarded Contract for the remaining term and any Option Years remaining.

e) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract

shall govern the Contractor's and DCPS's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided that the Contractor shall not be required to make any deliveries under this contract after

B.7 PRICE SCHEDULE – REQUIREMENTS

B.7.1 The Contractor shall provide fixed unit pricing for the meals/meal equivalent for the categories, items and quantities contained in Attachment J.12 in accordance with 7CFR210.10(d)(1), and 7CFR210.10(d)(3).

B.7.1.a	BASE YEAR	August 8, 2021 thru August 7, 2022 – Refer to Attachment J.12
B.7.1.b	OPTION YEAR ONE	August 8, 2022 thru August 7, 2023 – Refer to Attachment J.12
B.7.1.c	OPTION YEAR TWO	August 8, 2023 thru August 7, 2024 – Refer to Attachment J.12
B.7.1.d	OPTION YEAR THREE	August 8, 2024 thru August 7, 2025 – Refer to Attachment J.12
B.7.1.e	OPTION YEAR FOUR	August 8, 2025 thru August 7, 2026 – Refer to Attachment J.12

NOTE: All the Meals Categories covered in this contract shall be in complete compliance with 7CFR210.10(d)(1), and 7CFR210.10(d)(3).

B.7.2 BASE YEAR – August 8, 2021 thru August 7, 2022
Contractor shall submit completed Attachment J.12. The total pricing of this Table must match completed Attachment J.12 product price list. In the event of a discrepancy, Attachment J.12 will be considered for award.

Number	Period of Performance (POP)	Price
001	Date of Award thru August 7, 2022 – Refer to Attachment J.12	$
Total B.7.2	**ESTIMATED TOTAL**	**$**

B.7.3 OPTION YEAR ONE - August 8, 2022 thru August 7, 2023

Contractor shall submit completed Attachment J.12. The total pricing of this Table must match completed Attachment J.12 product price list. In the event of a discrepancy, Attachment J.12 will be considered for award.

Number	Period of Performance (POP)	Price
101	August 8, 2022 thru August 7, 2023 – Refer to Attachment J.12	$
Total B.7.3	**ESTIMATED TOTAL**	**$**

B.7.4 OPTION YEAR TWO - August 8, 2023 thru August 7, 2024

Contractor shall submit completed Attachment J.12. The total pricing of this Table must match completed Attachment J.12 product price list. In the event of a discrepancy, Attachment J.12 will be considered for award.

Number	Period of Performance (POP)	Price
201	August 8, 2023 thru August 7, 2024 – Refer to Attachment J.12	$
Total B.7.4	**ESTIMATED TOTAL**	**$**

B.7.5 OPTION YEAR THREE – August 8, 2024 thru August 7, 2025

Contractor shall submit completed Attachment J.12. The total pricing of this Table must match completed Attachment J.12 product price list. In the event of a discrepancy, Attachment J.12 will be considered for award.

Number	Period of Performance (POP)	Price
301	August 8, 2024 thru August 7, 2025 – Refer to Attachment J.12	$
Total B.7.5	**ESTIMATED TOTAL**	**$**

B.7.6 OPTION YEAR FOUR- August 8, 2025 thru August 7, 2026

Contractor shall submit completed Attachment J.12. The total pricing of this Table must match completed Attachment J.12 product price list. In the event of a discrepancy, Attachment J.12 will be considered for award.

Number	Period of Performance (POP)	Price
401	August 8, 2025 thru August 7, 2026 – Refer to Attachment J.12	$
Total B.7.6	**ESTIMATED TOTAL**	**$**

B.7.7 PRODUCE DISTRIBUTION

Number	**Period of Performance (POP)**	**Price**
B.7.2	Total Base Year	$
B.7.3	Total Option Year One	$
B.7.4	Total Option Year Two	$
B.7.5	Total Option Year Three	$
B.7.6	Total Option Year Four	$
B.7.7	**GRAND TOTAL**	**$**

B.7.6 SUBCONTRACTING: RESERVED

SECTION C: SPECIFICATIONS/WORK STATEMENT

C.1 SCOPE

C.1.1. The Contractor shall provide and deliver food service-related products such as produce to DCPS identified school sites participating in the Child Nutrition Programs including but not limited to the National School Breakfast Program (SBP), National School Lunch Program (NSLP), After-School Snack (ASSP), Fresh Fruit and Vegetable (FFVP), the Child and Adult Care Food At-Risk Supper Programs (CACFP) and the Summer Food Service Program (SFSP). These programs have been established by the United States Department of Agriculture (USDA) code of Federal regulations, the DC Healthy Schools Act of 2010 (and amendments), and the DC Healthy Students Amendment Act of 2018, which sets forth the terms and conditions applicable to the proposed procurement. The successful offeror shall deliver in accordance with the menu requirements for each applicable program.

C.1.2 DCPS FNS is seeking a Produce Distributing Company who can provide support to our Child Nutrition Programs by delivering/distributing grocery to seven school sites:

a. Excel Academy (2501 Martin Luther King Jr Ave SE, Washington, DC 20020)
b. Bard High School Early College DC (4430 H St SE, Washington, DC 20019)
c. Burroughs Education Campus (1820 Monroe St NE, Washington, DC 20018)
d. Langdon Education Campus (1900 Evarts St NE, Washington, DC 20018)
e. Langley Elementary School (101 T St NE, Washington, DC 20002)
f. McKinley MS/HS (151 T St NE, Washington, DC 20002)
g. Dunbar High School (101 N St NW, Washington, DC 20001)

C.1.3 Under this Requirements Contract, the Contractor shall provide the required services in accordance with pertinent Federal, USDA, and District laws, including but not limited to:

a. The Contractor must identify any items on offer that are not in compliance with the "Buy America: https://www.fns.usda.gov/sbp/school-breakfast-program
b. Child and Adult Care Food Program: https://www.fns.usda.gov/cacfp
c. All products furnished must meet or exceed the District of Columbia Healthy Schools Act as amended by the Healthy Students Amendment Act 2018 requirements which can be found at: https://code.dccouncil.us/dc/council/code/titles/38/chapters/8A/

C.1.4 The Contractor shall agree to track and report to the appropriate authorities all available USDA Commodities associated with items delivered to the District. Contractor further agrees to provide DCPS with detailed reports of all products purchased monthly with an accounting for Net Off Invoice (NOI) for any commodities items verifying that all items have been correctly credited and reported. Only allowable costs will be paid from the nonprofit school food service account. Such costs must be 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 (District). The Contractor is required to provide sufficient information to permit DCPS to identify allowable and unallowable costs and the amount of all such discounts, rebates and applicable credits on invoices and bills presented for payment to DCPS.

C.1.5 The Contractor must keep DCPS informed of new products, new brands or labels, or promotions that would be advantageous to the operations of the District's program, inclusive of point of sale materials and give away promotion.

C.1.6 The Offeror must conduct all program operations in accordance with Federal regulations, United States Department of Agriculture 7 CFR Parts 210, 215, 220, 225, 226, 240, 245, 250, 3016.36, 3017, 3018, 3019.40, 2 CFR Part 200, 2 CFR Part 180 and FNS (USDA) instructions, policies and memorandum, as applicable, in addition to all state and local regulations, policies and procedures, including but not limited to the DC Healthy Schools Act of 2010 (and amendments) and the Healthy Students Amendment Act of 2018, and all State Agency memorandum and requirements .

C.2 APPLICABLE DOCUMENTS

The Offeror must conduct all program operations in accordance with federal regulations, United States Department of Agriculture 7 CFR Parts 210, 215, 220, 225, 226, 240, 245, 250, 3016, 3017, 3018, 3019, 2 CFR 200.318, 2CFR Part 180 and FNS instructions, policies and memorandum, as applicable, in addition to all state and local regulations, policies and procedures, including but not limited to the DC Healthy Schools Act of 2010 (and amendments), The DC Healthy Students Amendment Act of 2018 and all State Agency memorandum and requirements. It is the duty of the Contractor to apprise themselves of all Programs requirements and to offer only on those contracts for which it has the applicable knowledge and can suitably comply.

The following documents are applicable to this procurement and are hereby incorporated by this reference:

Item No.	Document Type	Title	Date	Location
1	USDA Guidance	U.S. Department of Agriculture 7 CFR Part 210	2011	https://www.gpo.gov/fdsys/pkg/CFR-2011-title7-vol4/pdf/CFR-2011-title7-vol4-sec210-10.pdf
2	USDA Guidance	U.S. Department of Agriculture 7 CFR Part 215	2011	https://www.gpo.gov/fdsys/pkg/CFR-2011-title7-vol4/pdf/CFR-2011-title7-vol4-part215.pdf
3	USDA Guidance	U.S. Department of Agriculture 7 CFR Part 220	2011	https://www.gpo.gov/fdsys/pkg/CFR-2011-title7-vol4/pdf/CFR-2011-title7-vol4-part220.pdf
4	USDA Guidance	U.S. Department of Agriculture 7 CFR Part 225	2011	https://www.gpo.gov/fdsys/pkg/CFR-2011-title7-vol4/pdf/CFR-2011-title7-vol4-part225.pdf
5	USDA Guidance	U.S. Department of Agriculture 7 CFR Part 226	2011	https://www.gpo.gov/fdsys/pkg/CFR-2011-title7-vol4/pdf/CFR-2011-title7-vol4-part226.pdf
6	USDA Guidance	U.S. Department of Agriculture 7 CFR Part 240	2011	https://www.gpo.gov/fdsys/pkg/CFR-2011-title7-vol4/pdf/CFR-2011-title7-vol4-part240.pdf
7	USDA Guidance	U.S. Department of Agriculture 7 CFR Part 245	2011	https://www.gpo.gov/fdsys/pkg/CFR-2011-title7-vol4/pdf/CFR-2011-title7-vol4-part245.pdf
8	USDA Guidance	U.S. Department of Agriculture 7 CFR Part 250	2011	https://www.gpo.gov/fdsys/pkg/CFR-2011-title7-vol4/pdf/CFR-2011-title7-vol4-part250.pdf

9	USDA Guidance	U.S. Department of Agriculture 7 CFR Part 3016	2011	https://www.gpo.gov/fdsys/pkg/CFR-2011-title7-vol15/pdf/CFR-2011-title7-vol15-part3016.pdf
10	USDA Guidance	U.S. Department of Agriculture 7 CFR Part 3017	2010	https://www.gpo.gov/fdsys/pkg/CFR-2010-title7-vol15/pdf/CFR-2010-title7-vol15-part3017.pdf
11	USDA Guidance	U.S. Department of Agriculture 7 CFR Part 3018	2010	https://www.gpo.gov/fdsys/pkg/CFR-2010-title7-vol15/pdf/CFR-2010-title7-vol15-part3018.pdf
12	USDA Guidance	U.S. Department of Agriculture 7 CFR Part 3019	2010	https://www.gpo.gov/fdsys/pkg/CFR-2010-title7-vol15/pdf/CFR-2010-title7-vol15-part3019.pdf
13	USDA Guidance	U.S. Department of Agriculture 2 CFR 200.318	2014	https://www.gpo.gov/fdsys/pkg/CFR-2014-title2-vol1/pdf/CFR-2014-title2-vol1-sec200-318.pdf
14	USDA Guidance	U.S. Department of Agriculture 2CFR Part 180	2012	https://www.gpo.gov/fdsys/pkg/CFR-2012-title2-vol1/pdf/CFR-2012-title2-vol1-part180.pdf
15	USDA Guidance	Buy America Provision	2017	https://fns-prod.azureedge.net/sites/default/files/cn/SP38-2017os.pdf
16	USDA Guidance	Healthy Hunger-Free Kids Act	12/13/2010	https://fns-prod.azureedge.net/sites/default/files/PL_111-296.pdf
17	Regulation	DC Healthy Schools Act, as amended	8/10/2011	http://dchealthyschools.org/wordpress/wp-content/uploads/2011/11/Healthy-Schools-Act-as-Amended-20110810.pdf
18	Regulation	Healthy Students Amendment	2018	https://osse.dc.gov/sites/default/files/dc/sites/osse/page_content/attachments/Healthy%20Schools%20Act%20Informational%20Guide%2012.13.19.pdf
19	USDA Guidance	Child Nutrition Labels	2013	http://www.fns.usda.gov/cnlabeling/child-nutrition-cn-labeling-program
20	USDA Guidance	Product Formulation Statements	2014	https://fns-prod.azureedge.net/sites/default/files/resource-files/TA07-2010v3os.pdf

C.3 SPECIFICATIONS

C.3.1 Food Specifications:

C.3.1.1 Offers shall be submitted on the specified products included and shall include at a minimum, the portions specified by the U. S. Department of Agriculture for each meal, which are included with this RFP (Attachment J.12).

C.4 THIS SPACE IS INTENTIONALLY LEFT BLANK

C.5 WAREHOUSE AND DISTRIBUTION FOOD SAFETY

C.5.1 Upon request, offeror shall provide a copy of licenses and permits that are required by USDA, Federal and Local laws, and regulations.

C.5.2 In the event the Contractor's license is revoked or if the offeror receives an unfavorable rating notice in accordance with its local jurisdiction, or the Contractor's facilities are closed for health code violations, the Contractor shall notify the Contracting Officer (CO) and the Contract Administrator (CA) prior to the next scheduled delivery.

C.5.3 DCPS reserves the right to terminate the contract for default without advance notice in the event the contractor is closed for the reasons cited in C.5.2 above.

C.5.4 The Contractor shall develop and maintain a food safety program (U.S. Food and Drug Administration Hazard Analysis Critical Control Points) to ensure compliance with food handling, preparation, holding, storing and distribution industry standards. These shall be in compliance with current Federal, State, and Local Food Safety Standards and Regulations.

C.5.5 The Contractor shall maintain an in-house HACCP continuous quality control program for the inspection and monitoring of incoming ingredients against specifications in grade and microbiological standards. The program must extend to the finished products and ingredients compliance with portion size and nutrient content.

C.5.6 The Contractor shall develop and maintain a program for warehousing and distribution to ensure the following:

a) Usage of first-in-first-out principles;
b) Product shelf life is monitored;
c) Items are free of damage;
d) Correct items and quantifies are selected and delivered;
e) Customer satisfaction is monitored;
f) Product discrepancies and complaints are resolved, and corrective action is initiated;
g) Supplier of Federal Drug Administration (FDA) initiated food recalls are promptly reported to the SFA;
h) Compliance with Environmental Protection Agency (EPA) and Office of Safety and Health Administration (OSHA) requirements; and
i) Salvaged items or products are not to be used.

C.5.7 The Contractor shall keep records of food safety inspections performed by the USDA's FSIS, and/or State/Local inspector. The records shall be made available upon request to the District Government's Health Department and to DCPS. Any findings by a USDA's FSIS, State or Local inspection of the Contractor facility that documents a critical sanitary deficiency shall be reported immediately to the CO with an attached report of the corrective action taken within seven (7) business days from discovery.

C.5.8 The Contractor shall ensure that all products delivered conform in every respect to the requirements of the Federal Food, Drug and Cosmetics Act, and grade standards of USDA effective from date of award and implemented at the time of delivery.

C.6 STORED PRODUCTS PEST MANAGEMENT PROGRAM

C.6.1 The Contractor shall establish and maintain a stored products pest management program that establishes pest management practices for food and other collected non-food items. Also, the Contractor shall monitor and evaluate the program for compliance in accordance with accepted industry standards. These standards shall include but not be limited to the Code of Federal Regulations, Title 21, part 110, Good Manufacturing Practices, the Federal Drug and Cosmetic Act of 1938, and pertinent state and local laws and regulations.

C.7 THIS SPACE LEFT INTENTIONALLY BLANK -- RESERVED

C.8 BACKGROUND

C.8.1 DCPS Food and Nutrition Services (FNS) has been a pioneer in improving the quality and nutrition of school food while embracing alternative serving models to increase students' access to school meals. DCPS Food Services' mission statement is: "All DC Public Schools students are engaged and have access to wholesome and delicious meals that promote long-term wellness, preparation for learning and satisfaction with their school."

C.8.2 DCPS, FNS believes in providing appetizing school meals made from fresh, locally produced ingredients to the fullest extent possible in each kitchen, and we strive to engage the entire DC community in implementing programs that encourage healthy decision-making, promote sustainable practices and exceed expectations in satisfaction.

C.9 REQUIREMENTS

C.9.1 BUY AMERICAN PROVISION

C.9.1 **BUY AMERICAN PROVISION**

The Contractor agrees to purchase food and food products in accordance with the "Buy American" Provisions in the Richard B. Russell National School Lunch Act's (NSLA) including Public Law 105-336, section 12(n) of the NSLA (42 USC 1760(n) to purchase domestically grown and processed Foods, to the

maximum extent practicable. This provision supports American agriculture. A domestic commodity or product is defined as an agricultural commodity that is produced in the United States and a food product that is processed in the United States using substantial agricultural commodities that are produced in the United States. "Substantial" means that over 51 percent of the final processed product consists of agricultural commodities that were domestically grown.

C.9.1.1 The SFA requires Contractor shall provide assurance to comply with Buy American provision by:

C.9.1.2 Providing grower product label/information so that the SFA can determine country of origin before ordering.

C.9.1.3 Limited exceptions to the Buy American provision will be allowed. To allow the exception, the SFA shall determine that other domestic sources of the product are not available, the product is not easily substituted, and it is not the best time to purchase a product. If exception shall be allowed; it is as a last resort. These exceptions include:

C.9.1.4 A product not produced or manufactured in the United States in sufficient and reasonable quantities of a satisfactory quality; or,

C.9.1.5 Costs of a United States product is significantly higher than the non-domestic product.

C.9.1.6 The Contractor shall notify the SFA of any food items that is not incompliance with the "Buy American Provision" clause (non-domestic product (s)). DCPS must approve the use of non-domestic product(s).

C.9.1.7 The Contractor shall, upon request, provide "velocity" reporting of usage in all products including, but not limited to: product name, unit type purchased (cases, bunches, packs, etc.), number of units purchased, volume per unit (ounces, pounds, etc.), name and location of each supplier throughout the supply chain to include all distributors, wholesalers, processors, manufacturers, shippers and farm(s) of origin, price per unit, farm or ranch where product is sourced, total dollar value spent at the respective farm or ranch.

C.9.3 The Contractor shall deliver products between the hours of 7:30am and 11:00am at each location, as listed at Section C.1.2.

C.9.4 The Contractor shall be prepared to deliver DCPS pre-approved supplemental products in the event of an emergency (refrigeration loss, high usage, etc.) on a same-day basis that may exceed the delivery window stipulated in C.9.3 when requested by DCPS FNS.

C.9.5 The Contractor shall have at least five (5) years' experience as a commercial distributor for school food service and can demonstrate superior service.

C.9.6 The Contractor shall endeavor to ensure products are Locally Grown or produced with Geographic Preference.

C.9.7 The Contractor shall remove any packaging of its products which result from deliveries including crates, pallets, wrappers, and the like on each delivery day or more frequently if required to ensure excess trash does not remain and the physical plant is clear and organized.

C.9.8 The Contractor shall provide deliveries in a manner to accommodate DCPS' ability to best meet the needs of its students and in balance with physical plant capacities to hold product. This may require daily, twice weekly, or weekly deliveries.

C.9.9 The Contractor shall ensure a copy of each delivery ticket, signed by an authorized DCPS FNS representative occurs for each delivery.

C.9.10 **As Applicable**: The Contractor shall provide CN (Child Nutrition) and Nutrition Information for all products as requested by DCPS FNS. All food products must display nutrition labeling and CN labels as mandated by the U.S.D.A. Contractor shall provide a PFS for items that do not have a CN label.

C.9.11 The quantities provided are only estimates and are subject to fluctuations and changes. The Contractor shall have the capacity and the capability to revamp to meet all fluctuations, changes, and increases in the DCPS demand, quantities, and the locations.

SECTION D: PACKAGING AND MARKING

D.1 The Contractor shall pack and mark all items in accordance with good commercial practice. Labels shall be in accordance with the Federal, Food, Drug, and Cosmetic Act and regulations promulgated there under. The Contractor shall ship containers in compliance with the National Motor Freight Classification. To ensure that the receiving activity properly handles and stores items, the Contractor shall use standard commercial precautionary markings such as "KEEP FROZEN, KEEP REFRIGERATED".

D.1.2 Cartons – Each carton shall be labeled. Label to include:

a. Processors' Name(s) and Plant Address(s)
b. Item Identity
c. Date of Production
d. Quantity of Individual Units Per Carton

D.2 The packaging and marking requirements for the contract shall be governed by clause number (2), Shipping Instructions-Consignment, of the Government of the District of Columbia's Standard Contract Provisions for use with Supplies and Services Contracts, dated July 2010. (Attachment J.1).

D.3 <u>DELIVERY REQUIREMENTS</u>

D.3.1 The Contractor shall deliver only items and quantities ordered by the DCPS and as specified under Section B of the contract.

D.3.2 Products shall be delivered on mutually agreed scheduled delivery dates to the delivery sites (see Section C.1.2), unloaded, and placed in the designated areas at each school site by the contractor's personnel at each of the locations and times.

D.3.3 The Contractor shall place all deliveries in a location assigned by person(s) designated by the Ordering Agency. Deliveries will not be accepted at the entrance or outside of the facility. Refrigerated items must be placed in the refrigerator and frozen items must be placed in the freezer, and not left on the floor of the kitchen area or outside of the designated area. Dry items must be placed in the designated dry storage areas.

D.3.3.1 DCPS reserves the right to require personal protective equipment for all contractor personnel, including delivery personnel, upon entry to a school site.

D.3.4 The Contractor shall be responsible for delivery of all products at the specified delivery windows. Adequate freezing, refrigeration or heating shall be provided during delivery of all food to ensure the wholesomeness of food at delivery in accordance with State or local health codes.

D.3.5 DCPS reserves the right to add or delete schools. This will be done by issuing a modification which will be executed by the DCPS CO. Deletion or addition of schools shall be made not less than one week prior to the required state of service.

D.3.6 Any deviations from the delivery requirements including package size and content by the Contractor may be permitted upon approval by the Contract Administrator or designee.

D.3.7 The Contractor shall deliver all refrigerated food at an internal temperature of 41 degrees Fahrenheit or below with a minimum remaining shelf life or best used by life of ten (10) days.

D.3.8 If a scheduled delivery cannot be executed for any reason, the Contractor shall immediately notify the DCPS designated representative. The Contractor shall provide DCPS with the reason for non-delivery. If the reason is accepted, DCPS designee shall give the Contractor an alternate delivery date and/or time, which shall satisfy the needs at the site(s) missed in the delivery process. The Contractor shall be required to deliver only quantities for which an order was made by DCPS prior to delivery.

D.3.9 **As Applicable:** Fluid milk delivered shall have an expiration date on each carton container. The expiration date shall exceed at least ten (10) days beyond the day of delivery, with the exception of milk alternatives such as soy milk, which must have an expiration or best used by date with no less than 60 days remaining beyond the date of delivery.

D.3.10 The Contractor shall not make deliveries to DCPS on Saturday, Sunday, or on school and federal holidays unless specified otherwise.

D.3.11 Once a public radio/TV announcement/Social Media Posting of system-wide closing of schools due to inclement weather is made, all orders scheduled for delivery to DCPS for that day (s) shall be automatically cancelled and DCPS shall not assume responsibility for attempted deliveries. In such circumstances DCPS shall have the right to adjust delivery plans at its discretion.

D.3.12 When schools are closed for snow or other emergencies requiring short notice, the Contractor shall call the designated DCPS representative for disposition of orders.

D.4 SUPERVISION AND INSPECTION

D.4.1 The contractor shall provide management and supervision to maintain constant quality control inspections. The contractor shall also ensure specifications are met for product appearance, integrity, and packaging.

D.5 RECORD-KEEPING

D.5.1 Delivery tickets must be prepared by the contractor and must be itemized to show the number of products of each type delivered to each school. Designees of the SFA at each school will check adequacy and accuracy of delivery before signing the delivery ticket. Invoices shall be accepted by the school site only if signed by the SFA's designee at the school.

D.5.2 The delivery ticket shall contain information in accordance with applicable Federal, state and local regulations and shall include but is not limited to the following:

1. Ticket number
2. Date of Delivery
3. Delivery Address
4. Purchase Order Number
5. Item Type
6. Item Number
7. Quantity of Items Delivered
8. Unit Price
9. Extended Amount
10. Carrier Operator's Name
11. Signature of SFA designee, receiving the item; and
12. Acknowledgement of receiving the items by the SFA designee.

D.5.3 The Contractor shall maintain records supported by delivery tickets and purchase orders for this contract or other evidence for inspection and reference to support payments and claims.

D.5.4 The books and records of the contractor pertaining to this contract shall be available, for a period of three years from the date of submission of the final claim for reimbursement, or until the final resolution of any audits for inspection and audit by representatives of the State Agency, representatives of the U.S. Department of Agriculture, the District, and the Comptroller General of the United States at any reasonable time and place.

D.6 INSPECTION OF FACILITY

D.6.1 The contractor's facilities shall be subject to periodic inspections by USDA, state and local health departments, or any other agency designated to inspect product quality for the State. This will be accomplished in accordance with U. S. Department of Agriculture regulations.

SECTION E: INSPECTION AND ACCEPTANCE

E.1 The inspection and acceptance requirements for this contract shall be governed by clause number five (5) Inspection of Supplies of the Government of the District of Columbia's Standard Contract Provisions for use with Supplies and Services Contracts, dated July 2010. (Attachment J.1).

E.2 Any product that does not meet specifications of this procurement will be refused at the point of delivery.

E.3 This contract does not allow for product substitution without written authorization from the Contract Administrator or authorized designee.

E.4 The Contractor shall promptly notify the authorized CA or CA's designee a minimum of 24 hours in advance if an item cannot be delivered within the specified delivery time.

E.5 An equal or better substitute product must be made available to the District immediately for approval and subsequent distribution to school sites, at no additional charge to the District for product, freight, or redelivery to DCPS sites.

E.6 All substitutions in quality and quantity must receive prior approval from the CA or CA's authorized designee in order to qualify for payment.

E.7 If any item shall be found defective at any time before final acceptance of the complete delivery, the Contractor shall immediately remedy such defect in a manner satisfactory to DCPS.

E.8 Defective items shall be made good by the Contractor, and unsuitable items may be rejected, notwithstanding that such defective work and materials have been previously overlooked by DCPS and accepted.

E.9 The successful Contractor shall promptly correct all deficiencies, defects, and/or damages in equipment or products delivered to DCPS in accordance with this solicitation.

E.10 All corrections shall be made within 10 calendar days after such deficiencies, defects and/or damages are verbally reported to the Contractor by DCPS.

E.11 The Contractor shall be responsible for filing, processing, and collecting all damage claims against the shipper when applicable.

E.12 DCPS shall hold the successful Contractor liable and responsible for all damages which may be sustained because of their failure to comply with any conditions herein.

E.13 If the Contractor fails to furnish or deliver any material, supplies, equipment, or services at the prices quoted, or at the times and places stated, or otherwise fails to comply with the terms of the documents in their entirety, DCPS may purchase the items herein specified elsewhere, without notice to the successful Contractor.

E.14 Costs accrued by DCPS for a purchase resulting from a failure to perform, shall be invoiced to the successful Contractor or payment may be deducted from future invoices.

E.15 Prices paid by DCPS shall be considered the prevailing market prices at the time such purchase is made.

SECTION F: PERIOD OF PERFORMANCE AND DELIVERABLES

F.1 TERM OF CONTRACT

F.1.1 The term of the contract for the Base Year shall be from August 8, 2021 through August 7, 2022 with four option year periods exercised solely at the DCPS discretion. The Period of Performance (POP) for this contract is as follows:

Years	Period of Performance (POP)
Base Year	August 8, 2021 thru August 7, 2022
Option Year One	August 8, 2022 thru August 7, 2023
Option Year Two	August 8, 2023 thru August 7, 2024
Option Year Three	August 8, 2024 thru August 7, 2025
Option Year Four	August 8, 2025 thru August 7, 2026

F.2 OPTION TO EXTEND THE TERM OF THE CONTRACT

F.2.1 DCPS may extend the term of this contract for a period of four (4) one-year option periods, or successive fractions thereof, by providing written notice to the Contractor before the expiration of the contract; provided that DCPS will give the Contractor preliminary written notice of its intent to extend at least thirty (30) days before the contract expires. The preliminary notice does not commit DCPS to an extension. The exercise of this option is subject to the availability of funds at the time of the exercise of this option. The Contractor may waive the thirty (30) day preliminary notice requirement by providing a written waiver to the Contracting Officer prior to expiration of the contract.

F.2.2 If DCPS exercises this option, the extended contract shall be considered to include this option provision.

F.2.3 The price for the option period shall be as specified in the Section B of the contract.

F.2.4 The total duration of this contract, including the exercise of any options under this clause, shall not exceed five (5) years.

F.3 DELIVERABLES

F.3.1 The Contractor shall perform the activities required to successfully complete the District's requirements and submit each deliverable to the Contract Administrator (CA) identified in section G.9 in accordance with the following:

Item Number	Deliverable	Frequency	Format/Method of Delivery	Due Date
C.9.10	Nutrition Facts Label & Ingredients	As Needed/As Applicable	Electronically	As a component of the RFP and as needed/applicable
G.2	Invoice Submittals	As Needed	Electronically and Paper	Weekly Summary for Prior Week Deliveries
G.1.2	Monthly Statements	As Needed	Electronically and Paper	Once per month for prior month service
C.9.1.3-C.9.1.7	Buy American Exemption Letter	As needed	Electronic Document	As a component of the RFP and as needed thereafter

F.3.2 The Contractor shall submit to the District, as a deliverable, the report described in section H.5.5 that is required by the 51% District Residents New Hires Requirements and First Source Employment Agreement. If the Contractor does not submit the report as part of the deliverables, final payment to the Contractor shall not be paid pursuant to section G.3.2.

SECTION G: CONTRACT ADMINISTRATION

G.1 INVOICE PAYMENT

G.1.1 DCPS will make payments to the Contractor, upon the submission of proper invoices, at the prices stipulated in this contract, for supplies delivered and accepted or services performed and accepted, less any discounts, allowances or adjustments provided for in this contract.

G.1.2 Weekly, the Contractor shall submit a summary invoice with pdf attachments of all signed delivery tickets and/or invoices for proper review and approval before submission to the vendor portal. Account statements should also be sent on a monthly basis or as otherwise specified in Section G.2.

G.1.3 DCPS will pay the Contractor on or before the 30th day after receiving a proper invoice from the Contractor.

G.2 INVOICE SUBMITTAL

G.2.1 The Contractor shall create and submit payment requests in an electronic format through the DC Vendor Portal, https://vendorportal.dc.gov.

G.2.2 The Contractor shall also simultaneously submit all invoice packets referenced in G.1.2 to the assigned DCPS Contract Administrator and Invoicing Designee for review. Payment shall be made within 30 days of DCPS submitting the invoice to DC OCFO for payment.

The address of the Contract Administrator is:

Robert M. Jaber
Executive Director, Food and Nutrition Services
Office of the Chief Operating Officer
1200 First Street, NE, 9th Floor
Washington, DC 20002
Robert.Jaber@k12.dc.gov

The address of the Invoicing Designee:

Yariany Perez-Nieto
Manager, Finance, Strategy and Technology – Food and Nutrition Services
Office of the Chief Operating Officer
1200 First Street, NE, 9th Floor
Washington, DC 20002
Yariany.Perez-Nieto@k12.dc.gov

The address of the Program Designee:

Kelsey Weisgerber
Specialist, Field Operations – Food and Nutrition Services
Office of the Chief Operating Officer
1200 First Street NE, 9th Floor
Washington, DC 20002
Kelsey.Weisgerber@k12.dc.gov

G.3 FIRST SOURCE AGREEMENT REQUEST FOR FINAL PAYMENT – IF APPLICABLE

G.3.1 For contracts subject to the 51% District Residents New Hires Requirements and First Source Employment Agreement requirements, final request for payment must be accompanied by the report or a waiver of compliance discussed in section H.5.5.

G.3.2 No final payment shall be made to the Contractor until the agency CFO has received the Contracting Officer's final determination or approval of waiver of the Contractor's compliance with 51% District Residents New Hires Requirements and First Source Employment Agreement requirements.

G.4 PAYMENT

G.4.1 PAYMENTS ON PARTIAL DELIVERIES OF GOODS

Unless otherwise specified in this contract, payment will be made on partial deliveries of goods accepted by the District if:

a) The amount due on the deliveries warrants it; or

b) The Contractor requests it and the amount due on the deliveries is at least $1,000 or 50 percent of the total contract price.

G.4.2 PARTIAL PAYMENTS

Unless otherwise specified in this contract, payment will be made on partial deliveries of goods and services accepted by the District if:

a) The amount due on the deliveries warrants it; or

b) The Contractor requests it and the amount due on the deliveries is in accordance with the following: Payment will be made on completion and acceptance of each item in accordance with the agreed upon delivery schedule

c) Presentation of a properly executed invoice, Section G.2.

G.5 ASSIGNMENT OF CONTRACT PAYMENTS

G.5.1 In accordance with 27 DCMR 3250, the Contractor may assign to a bank, trust company, or other financing District funds due or to become due because of the performance of this contract.

G.5.2 Any assignment shall cover all unpaid amounts payable under this contract and shall not be made to more than one party.

G.5.3 Notwithstanding an assignment of contract payments, the Contractor, not the assignee, is required to prepare invoices. Where such an assignment has been made, the original copy of the invoice must refer to the assignment and must show that payment of the invoice is to be made directly to the assignee as follows:

"Pursuant to the instrument of assignment dated _____, make payment of this invoice to (name and address of assignee)."

G.6 THE QUICK PAYMENT ACT

G.6.1 Interest Penalties to Contractors

G.6.1.1 The District will pay interest penalties on amounts due to the Contractor under the Quick Payment Act, D.C. Official Code § 2-221.01 et seq., as amended, for the period beginning on the day after the required payment date and ending on the date on which payment of the amount is made. Interest shall be calculated at the rate of at least 1.5% per month. No interest penalty shall be paid if payment for the completed delivery of the item of property or service is made on or before the required payment date. The required payment date shall be:

G.6.1.1.1 The date on which payment is due under the terms of the contract;

G.6.1.1.2 Not later than 7 calendar days, excluding legal holidays, after the date of delivery of meat or meat food products;

G.6.1.1.3 Not later than 10 calendar days, excluding legal holidays, after the date of delivery of a perishable agricultural commodity; or

G.6.1.1.4 30 calendar days, excluding legal holidays, after receipt of a proper invoice for the amount of the payment due.

G.6.1.2 No interest penalty shall be due to the Contractor if payment for the completed delivery of goods or services is made on or after:

G.6.1.2.1 3rd day after the required payment date for meat or a meat food product;

G.6.1.2.2 5th day after the required payment date for an agricultural commodity; or

G.6.1.2.3 15th day after any other required payment date.

G.6.1.3 Any amount of an interest penalty which remains unpaid at the end of any 30-day period shall be

added to the principal amount of the debt and thereafter interest penalties shall accrue on the added amount.

G.6.2 Payments to Subcontractors

G.6.2.1 The Contractor must take one of the following actions within seven (7) days of receipt of any amount paid to the Contractor by the District for work performed by any subcontractor under the contract:

G.6.2.1.1 Pay the subcontractor(s) for the proportionate share of the total payment received from the District that is attributable to the subcontractor(s) for work performed under the contract; or

G.6.2.1.2 Notify the CO and the subcontractor(s), in writing, of the Contractor's intention to withhold all or part of the subcontractor's payment and state the reason for the nonpayment.

G.6.2.2 The Contractor must pay any subcontractor or supplier interest penalties on amounts due to the subcontractor or supplier beginning on the day after the payment is due and ending on the date on which the payment is made. Interest shall be calculated at the rate of at least 1.5% per month. No interest penalty shall be paid on the following if payment for the completed delivery of the item of property or service is made on or before the:

G.6.2.2.1 3rd day after the required payment date for meat or a meat product;

G.6.2.2.2 5th day after the required payment date for an agricultural commodity; or

G.6.2.2.3 15th day after any other required payment date.

G.6.2.3 Any amount of an interest penalty which remains unpaid by the Contractor at the end of any 30-day period shall be added to the principal amount of the debt to the subcontractor and thereafter interest penalties shall accrue on the added amount.

G.6.2.4 A dispute between the Contractor and subcontractor relating to the amounts or entitlement of a subcontractor to a payment or a late payment interest penalty under the Quick Payment Act does not constitute a dispute to which the District is a party. The District may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

G.7 CONTRACTING OFFICER (CO)

Contracts will be entered into and signed on behalf of the District only by contracting officers (The Contract Specialist cannot sign on behalf of the District). The contact information for the Contracting Officer is:

Candace Butler
Office of Contracts and Acquisitions
District of Columbia Public Schools
1200 First St. NE, 9th Floor
Washington, DC 20002
Email: candace butler@k12.dc.gov

Contract Specialist:
Zahra Hashmi, Senior Contract Specialist
Office of Contracts and Acquisitions
District of Columbia Public Schools
1200 First St. NE, 9th Floor
Washington, DC 20002
Email: zahra.hashmi@k12.dc.gov

G.8 AUTHORIZED CHANGES BY THE CONTRACTING OFFICER

G.8.1 The CO is the only person authorized to approve changes in any of the requirements of this contract.

G.8.2 The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this contract, unless issued in writing and signed by the CO.

G.8.3 In the event the Contractor effects any change at the instruction or request of any person other than the CO, the change will be considered to have been made without authority and no adjustment will be made in the contract price to cover any cost increase incurred as a result thereof.

G.9 CONTRACT ADMINSTRATOR (CA)

G.9.1 The CA is responsible for general administration of the contract and advising the CO as to the Contractor's compliance or noncompliance with the contract. The CA has the responsibility of ensuring the work conforms to the requirements of the contract and such other responsibilities and authorities as may be specified in the contract. These include:

G.9.1.1 Keeping the CO fully informed of any technical or contractual difficulties encountered during the performance period and advising the CO of any potential problem areas under the contract;

G.9.1.2 Coordinating site entry for Contractor personnel, if applicable;

G.9.1.3 Reviewing invoices for completed work and recommending approval by the CO if the Contractor's costs are consistent with the negotiated amounts and progress is satisfactory and commensurate with the rate of expenditure;

G.9.1.4 Reviewing and approving invoices for deliverables to ensure receipt of goods and services. This includes the timely processing of invoices and vouchers in accordance with the District's payment provisions; and

G.9.1.5 Maintaining a file that includes all contract correspondence, modifications, records of inspections (site, data, equipment) and invoice or vouchers.

G.9.2 The address and telephone number of the CA is:

Robert M. Jaber
District of Columbia Public Schools
Executive Director, Food & Nutrition Services
Office of the Chief Operating Officer
1200 First Street NE, 9th Floor
Washington, DC 20002
(202) 744-7347

G.9.3 The CA shall NOT have the authority to:

1) Award, agree to, or sign any contract, delivery order or task order. Only the CO shall make contractual agreements, commitments or modifications;
2) Grant deviations from or waive any of the terms and conditions of the contract;
3) Increase the dollar limit of the contract or authorize work beyond the dollar limit of the contract,
4) Authorize the expenditure of funds by the Contractor;
5) Change the period of performance; or
6) Authorize the use of District property, except as specified under the contract.

G.9.4 The Contractor will be fully responsible for any changes not authorized in advance, in writing, by the CO; may be denied compensation or other relief for any additional work performed that is not so authorized; and may also be required, at no additional cost to the District, to take all corrective action necessitated because of the unauthorized changes.

G.10 ORDERING CLAUSE

G.10.1 Any supplies and services to be furnished under this contract will be ordered by issuance of delivery orders or task orders by the CO. Such orders may be issued during the term of this contract.

G.10.2 All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of a conflict between a delivery order or task order and this contract, the contract shall control.

G.10.3 If mailed, a delivery order or task order is considered “issued” when the District deposits the order in the mail. Orders may be issued by facsimile or be electronic commerce method.

SECTION H: SPECIAL CONTRACT REQUIREMENTS

H.1 HIRING OF DISTRICT RESIDENTS AS APPRENTICES AND TRAINEES – IF APPLICABLE

H.1.1 For all new employment resulting from this contract or subcontracts hereto, as defined in Mayor's Order 83-265 and implementing instructions, the Contractor shall use its best efforts to comply with the following basic goal and objectives for utilization of bona fide residents of the District of Columbia in each project's labor force:

H.1.1.1 At least fifty-one (51) percent of apprentices and trainees employed shall be residents of the District of Columbia registered in programs approved by the District of Columbia Apprenticeship Council.

H.1.2 The Contractor shall negotiate an Employment Agreement with the Department of Employment Services ("DOES") for jobs created as a result of this contract. The DOES shall be the Contractor's first source of referral for qualified apprentices and trainees in the implementation of employment goals contained in this clause.

H.2 DEPARTMENT OF LABOR WAGE DETERMINATIONS

The Contractor shall be bound by the Wage Determination No.: 2015-4281, Revision No.: 17, dated 04/23/2020, issued by the U.S. Department of Labor in accordance with the Service Contract Act, 41 U.S.C. §351 *et seq*., and incorporated herein as Section J.2. The Contractor shall be bound by the wage rates for the term of the contract subject to revision as stated herein and in accordance with Section 24 of the SCP. If an option is exercised, the Contractor shall be bound by the applicable wage rates at the time of the option. If the option is exercised and the CO obtains a revised wage determination, the revised wage determination is applicable for the option periods and the Contractor may be entitled to an equitable adjustment.

H.3 PREGNANT WORKERS FAIRNESS

H.3.1 The Contractor shall comply with the Protecting Pregnant Workers Fairness Act of 2016, D.C. Official Code § 32-1231.01 et seq. (PPWF Act).

H.3.2 The Contractor shall not:

(a) Refuse to make reasonable accommodations to the known limitations related to pregnancy, childbirth, related medical conditions, or breastfeeding for an employee, unless the Contractor can demonstrate that the accommodation would impose an undue hardship;

(b) Take an adverse action against an employee who requests or uses a reasonable accommodation in regard to the employee's conditions or privileges of employment, including failing to reinstate the employee when the need for reasonable accommodations ceases to the employee's original job or to an equivalent position with equivalent:

(1) Pay;

(2) Accumulated seniority and retirement;

(3) Benefits; and

(4) Other applicable service credits;

(c) Deny employment opportunities to an employee, or a job applicant, if the denial is based on the need of the employer to make reasonable accommodations to the known limitations related to pregnancy, childbirth, related medical conditions, or breastfeeding;

(d) Require an employee affected by pregnancy, childbirth, related medical conditions, or breastfeeding to accept an accommodation that the employee chooses not to accept if the employee does not have a known limitation related to pregnancy, childbirth, related medical conditions, or breastfeeding or the accommodation is not necessary for the employee to perform her duties;

(e) Require an employee to take leave if a reasonable accommodation can be provided; or

(f) Take adverse action against an employee who has been absent from work as a result of a pregnancy-related condition, including a pre-birth complication.

H.3.3 The Contractor shall post and maintain in a conspicuous place a notice of rights in both English and Spanish and provide written notice of an employee's right to a needed reasonable accommodation related to pregnancy, childbirth, related medical conditions, or breastfeeding pursuant to the PPWF Act to:

(a) New employees at the commencement of employment;

(b) Existing employees; and

(c) An employee who notifies the employer of her pregnancy, or other condition covered by the PPWF Act, within 10 days of the notification.

H.3.4 The Contractor shall provide an accurate written translation of the notice of rights to any non-English or non-Spanish speaking employee.

H.3.5 Violations of the PPWF Act shall be subject to civil penalties as described in the Act.

H.4 UNEMPLOYED ANTI-DISCRIMINATION

H.4.1 The Contractor shall comply with the Unemployed Anti-Discrimination Act of 2012, D.C. Official Code § 32-1361 *et seq*.

H.4.2 The Contractor shall not:

(a) Fail or refuse to consider for employment, or fail or refuse to hire, an individual as an employee because of the individual's status as unemployed; or

(b) Publish, in print, on the Internet, or in any other medium, an advertisement or announcement for any vacancy in a job for employment that includes:

(1) Any provision stating or indicating that an individual's status as unemployed disqualifies the individual for the job; or

(2) Any provision stating or indicating that an employment agency will not consider or hire an individual for employment based on that individual's status as unemployed.

H.4.3 Violations of the Unemployed Anti-Discrimination Act shall be subject to civil penalties as described in the Act.

H.5 51% DISTRICT RESIDENTS NEW HIRES REQUIREMENTS AND FIRST SOURCE EMPLOYMENT AGREEMENT

Delete Article 35, 51% District Residents New Hires Requirements and First Source Employment Agreement, of the Standard Contract Provisions dated July 2010 for use with District of Columbia Government Supplies and Services Contracts and substitute the following Section H.5 51% DISTRICT RESIDENTS NEW HIRES REQUIREMENTS AND FIRST SOURCE EMPLOYMENT AGREEMENT in its place:

H.5 51% DISTRICT RESIDENTS NEW HIRES REQUIREMENTS AND FIRST SOURCE EMPLOYMENT AGREEMENT IF APPLICABLE.

H.5.1 For contracts for services in the amount of $300,000 or more, the Contractor shall comply with the First Source Employment Agreement Act of 1984, as amended, D.C. Official Code § 2-219.01 et seq. (First Source Act).

H.5.2 The Contractor shall enter into and maintain during the term of the contract, a First Source Employment Agreement (Employment Agreement) with the District of Columbia Department of Employment Service's (DOES), in which the Contractor shall agree that:

(a) The first source for finding employees to fill all jobs created in order to perform the contract shall be the First Source Register; and

(b) The first source for finding employees to fill any vacancy occurring in all jobs covered by the Employment Agreement shall be the First Source Register.

H.5.3 The Contractor shall not begin performance of the contract until its Employment Agreement has been accepted by DOES. Once approved, the Employment Agreement shall not be amended except with the approval of DOES.

H.5.4 The Contractor agrees that at least 51% of the new employees hired to perform the contract shall be District residents.

H.5.5 The Contractor's hiring and reporting requirements under the First Source Act and any rules promulgated thereunder shall continue for the term of the contract.

H.5.6 The CO may impose penalties, including monetary fines of 5% of the total amount of the direct and indirect labor costs of the contract, for a willful breach of the Employment Agreement, failure to submit the required hiring compliance reports, or deliberate submission of falsified data.

H.5.7 If the Contractor does not receive a good faith waiver, the CO may also impose an additional penalty equal to 1/8 of 1% of the total amount of the direct and indirect labor costs of the contract for each percentage by which the Contractor fails to meet its hiring requirements.

H.5.8 Any contractor which violates, more than once within a 10-year timeframe, the hiring or reporting requirements of the First Source Act shall be referred for debarment for not more than five (5) years.

H.5.9 The contractor may appeal any decision of the CO pursuant to this clause to the D.C. Contract Appeals Board as provided in clause 14 of the SCP, Disputes.

H.5.10 The provisions of the First Source Act do not apply to nonprofit organizations which employ 50 employees or less.

H.6 SECTION 504 OF THE REHABILITATION ACT OF 1973, as amended.

During the performance of the contract, the Contractor and any of its subcontractors shall comply with Section 504 of the Rehabilitation Act of l973, as amended. This Act prohibits discrimination against disabled people in federally funded programs and activities. See 29 U.S.C. § 794 *et seq*.

H.7 AMERICANS WITH DISABILITIES ACT OF 1990 (ADA)

During the performance of this contract, the Contractor and any of its subcontractors shall comply with the ADA. The ADA makes it unlawful to discriminate in employment against a qualified individual with a disability. See 42 U.S.C. §12101 *et seq*.

H.8 WAY TO WORK AMENDMENT ACT OF 2006

H.8.1 Except as described in H.8.8 below, the Contractor shall comply with Title I of the Way to Work Amendment Act of 2006, effective June 8, 2006 (D.C. Law 16-118, D.C. Official Code §2-220.01 *et seq*.) ("Living Wage Act of 2006"), for contracts for services in the amount of $100,000 or more in a 12-month period.

H.8.2 The Contractor shall pay its employees and subcontractors who perform services under the contract no less than the current living wage published on the OCP website at www.ocp.dc.gov.

H.8.3 The Contractor shall include in any subcontract for $15,000 or more a provision requiring the subcontractor to pay its employees who perform services under the contract no less than the current living wage rate.

H.8.4 The DOES may adjust the living wage annually and the OCP will publish the current living wage rate on its website at www.ocp.dc.gov.

H.8.5 The Contractor shall provide a copy of the Fact Sheet attached as J.6 to each employee and subcontractor who performs services under the contract. The Contractor shall also post the Notice attached as J.5 in a conspicuous place in its place of business. The Contractor shall include in any

subcontract for $15,000 or more a provision requiring the subcontractor to post the Notice in a conspicuous place in its place of business.

H.8.6 The Contractor shall maintain its payroll records under the contract in the regular course of business for a period of at least three (3) years from the payroll date, and shall include this requirement in its subcontracts for $15,000 or more under the contract.

H.8.7 The payment of wages required under the Living Wage Act of 2006 shall be consistent with and subject to the provisions of D.C. Official Code §32-1301 *et seq*.

H.8.8 The requirements of the Living Wage Act of 2006 do not apply to:

1) Contracts or other agreements that are subject to higher wage level determinations required by federal law;
2) Existing and future collective bargaining agreements, provided, that the future collective bargaining agreement results in the employee being paid no less than the established living wage;
3) Contracts for electricity, telephone, water, sewer or other services provided by a regulated utility;
4) Contracts for services needed immediately to prevent or respond to a disaster or eminent threat to public health or safety declared by the Mayor;
5) Contracts or other agreements that provide trainees with additional services including, but not limited to, case management and job readiness services; provided that the trainees do not replace employees subject to the Living Wage Act of 2006;
6) An employee under 22 years of age employed during a school vacation period, or enrolled as a full-time student, as defined by the respective District, who is in high school or at an accredited District of higher education and who works less than 25 hours per week; provided that he or she does not replace employees subject to the Living Wage Act of 2006;
7) Tenants or retail establishments that occupy property constructed or improved by receipt of government assistance from the District of Columbia; provided, that the tenant or retail establishment did not receive direct government assistance from the District;
8) Employees of nonprofit organizations that employ not more than 50 individuals and qualify for taxation exemption pursuant to section 501(c)(3) of the Internal Revenue Code of 1954, approved August 16, 1954 (68A Stat. 163; 26 U.S.C. § 501(c)(3);
9) Medicaid provider agreements for direct care services to Medicaid recipients, provided, that the direct care service is not provided through a home care agency, a community residence facility, or a group home for mentally retarded persons as those terms are defined in section 2 of the Health-Care and Community Residence Facility, Hospice, and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501); and
10) Contracts or other agreements between managed care organizations and the Health Care Safety Net Administration or the Medicaid Assistance Administration to provide health services.

H.8.9 The Mayor may exempt a contractor from the requirements of the Living Wage Act of 2006, subject to the approval of Council, in accordance with the provisions of Section 109 of the Living Wage Act of 2006.

H.9 [RESERVED]

H.9.A RESERVED

H.10 FAIR CRIMINAL RECORD SCREENING

H.10.1 The Contractor shall comply with the provisions of the Fair Criminal Record Screening Amendment Act of 2014, effective December 17, 2014 (D.C. Law 20-152) (the "Act" as used in this section). This section applies to any employment, including employment on a temporary or contractual basis, where the physical location of the employment is in whole or substantial part within the District of Columbia.

H.10.2 Prior to making a conditional offer of employment, the Contractor shall not require an applicant for employment, or a person who has requested consideration for employment by the Contractor, to reveal or disclose an arrest or criminal accusation that is not then pending or did not result in a criminal conviction.

H.10.3 After making a conditional offer of employment, the Contractor may require an applicant to disclose or reveal a criminal conviction.

H.10.4 The Contractor may only withdraw a conditional offer of employment, or take adverse action against an applicant, for a legitimate business reason as described in the Act.

H.10.5 This section and the provisions of the Act shall not apply:

(a) Where a federal or District law or regulation requires the consideration of an applicant's criminal history for the purposes of employment;

(b) To a position designated by the employer as part of a federal or District government program or obligation that is designed to encourage the employment of those with criminal histories;

(c) To any facility or employer that provides programs, services, or direct care to, children, youth, or vulnerable adults; or

(d) To employers that employ less than 11 employees.

H.10.6 A person claiming to be aggrieved by a violation of the Act may file an administrative complaint with the District of Columbia Office of Human Rights, and the Commission on Human Rights may impose monetary penalties against the Contractor.

H.11 DISTRICT RESPONSIBILITIES

H.11.1 DCPS will be responsible for placing and confirming orders for delivery.

H.11.2 DCPS will ensure that products are received in a safe manner and conform to specifications as provided in this Contract.

H.11.3 DCPS will supply an appropriate amount and types of storage space for the safe holding of products until they are distributed.

H.11.4 DCPS will provide authorization for the receipt of the type and quantity of products at the time of delivery.

H.12 CONTRACTOR RESPONSIBILITIES

H.12.1 Contractor shall deliver products that conform to all specifications as provided in this Contract.

H.12.2 Contractor shall notify DCPS of any product recalls immediately upon discovery.

H.12.3 Contractor shall deliver products to only authorized DCPS personnel.

H.12.4 Contractor shall place items in the appropriate storage place as directed by FNS personnel and rotate products to ensure a "first-in-first-out" method is effectively utilized.

H.12.5 Contractor shall provide ongoing feedback which analyzes the volume of products being purchased during a requested date range.

H.12.6 Contractor shall participate in and support any DCPS engagement or satisfaction initiatives in accordance with the mission of FNS and its intention to best serve DCPS students and the community.

H.13 PUBLICITY

The Contractor shall always obtain the prior written approval from the CO before it, any of its officers, agents, employees or subcontractors, either during or after expiration or termination of the contract, make any statement, or issue any material, for publication through any medium of communication, bearing on the work performed or data collected under this contract.

H.14 FREEDOM OF INFORMATION ACT

The District of Columbia Freedom of Information Act, at D.C. Official Code §2-532 (a-3), requires the District to make available for inspection and copying any record produced or collected pursuant to a District contract with a private contractor to perform a public function, to the same extent as if the record were maintained by the agency on whose behalf the contract is made. If the Contractor receives a request for such information, the Contractor shall immediately send the request to the CA who will provide the request to the FOIA Officer for the agency with programmatic responsibility in accordance with the D.C. Freedom of Information Act. If the agency with programmatic responsibility receives a request for a record maintained by the Contractor pursuant to the contract, the CA will forward a copy to the Contractor. In either event, the Contractor is required by law to provide all responsive records to the CA within the timeframe designated by the CA. The FOIA Officer for the agency with programmatic responsibility will determine the releasability of the records. The District will reimburse the Contractor for the costs of searching and copying the records in accordance with D.C. Official Code §2-532 and Chapter 4 of Title 1 of the *D.C. Municipal Regulations*.

H.15 ADVISORY AND ASSISTANCE SERVICES

This contract is a "nonpersonal services contract". The Contractor and the Contractor's employees: (1) shall perform the services specified herein as independent contractors, not as employees of the government; (2) shall be responsible for their own management and administration of the work required and bear sole responsibility for complying with any and all technical, schedule, financial

requirements or constraints attendant to the performance of this contract; (3) shall be free from supervision or control by any government employee with respect to the manner or method of performance of the service specified; but (4) shall, pursuant to the government's right and obligation to inspect, accept or reject work, comply with such general direction of the CO, or the duly authorized representative of the CO as is necessary to ensure accomplishment of the contract objectives.

SECTION I: CONTRACT CLAUSES

I.1 APPLICABILITY OF STANDARD CONTRACT PROVISIONS

The Standard Contract Provisions for use with District of Columbia Government Supplies and Services Contracts dated July 2010 ("SCP") are incorporated as part of the contract. To obtain a copy of the SCP go to www.ocp.dc.gov, click on OCP Policies under the heading "Information", then click on "Standard Contract Provisions – Supplies and Services Contracts".

I.2 CONTRACTS THAT CROSS FISCAL YEARS

I.2.1 AVAILABILITY OF FUNDS

I.2.1.1 Continuation of this contract beyond the current fiscal year is contingent upon future fiscal appropriations.

I.2.1.2 The District will have the option to cancel this contract if the Federal Government withdraws funds to support the Child Nutrition Programs including but not limited to the National School Breakfast and Lunch Programs and the Child and Adult Care Food At-Risk Supper Program.

I.2.1.3 It is further understood that, in the event of cancellation of the contract, the District will be responsible for products that have already been delivered in accordance with this contract.

I.3 CONFIDENTIALITY OF INFORMATION

The Contractor shall keep all information relating to any employee or customer of the District in absolute confidence and shall not use the information in connection with any other matters; nor shall it disclose any such information to any other person, firm or corporation, in accordance with the District and federal laws governing the confidentiality of records.

I.4 TIME

Time, if stated in a number of days, will include Saturdays, Sundays, and holidays, unless otherwise stated herein.

I.5 RIGHTS IN DATA

Delete Article 42, Rights in Data, of the Standard Contract Provisions dated July 2010 for use with District of Columbia Government Supplies and Services Contracts and substitute the following Article 42, Rights in Data) in its place:

A. Definitions

1. "Products" - A deliverable under any contract that may include commodities, services and/or technology furnished by or through Contractor, including existing and custom Products, such as, but not limited to:

a. recorded information, regardless of form or the media on which it may be recorded;
b. document research;
c. experimental, developmental, or engineering work;
d. licensed software;
e. components of the hardware environment;
f. printed materials (including but not limited to training manuals, system and user documentation, reports, drawings);
g. third party software;
h. modifications, customizations, custom programs, program listings, programming tools, data, modules, components; and
i. any intellectual property embodied therein, whether in tangible or intangible form, including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, source code, and object code.

2. "Existing Products" - Tangible Products and intangible licensed Products that exist prior to the commencement of work under the contract. Existing Products must be identified on the Product prior to commencement of work or else will be presumed to be Custom Products.

3. "Custom Products" - Products, preliminary, final or otherwise, which are created or developed by Contractor, its subcontractors, partners, employees, resellers or agents for the District under the contract.

4. "District" – The District of Columbia and its agencies.

B. **Title to Project Deliverables**

The Contractor acknowledges that it is commissioned by the District to perform services detailed in the contract. The District shall have ownership and rights for the duration set forth in the contract to use, copy, modify, distribute, or adapt Products as follows:

1. Existing Products: Title to all Existing Licensed Product(s), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall remain with Contractor or third party proprietary owner, who retains all rights, title and interest (including patent, trademark or copyrights). Effective upon payment, the District shall be granted an irrevocable, non-exclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, adapt (unless Contractor advises the District as part of Contractor's bid that adaptation will violate existing agreements or statutes and Contractor demonstrates such to the District's satisfaction), and distribute Existing Product to District users up to the license capacity stated in the contract with all license rights

necessary to fully effect the general business purpose of the project or work plan or contract. Licenses shall be granted in the name of the District. The District agrees to reproduce the copyright notice and any other legend of ownership on any copies authorized under this paragraph.

2. Custom Products: Effective upon Product creation, Contractor hereby conveys, assigns, and transfers to the District the sole and exclusive rights, title and interest in Custom Product(s), whether preliminary, final or otherwise, including all patent, trademark and copyrights. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction and marketing by or through Contractor.

C. Transfers or Assignments of Existing or Custom Products by the District

The District may transfer or assign Existing or Custom Products and the licenses thereunder to another District agency. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques, and experience developed under a project or work plan in the course of Contractor's business.

D. Subcontractor Rights

Whenever any data, including computer software, are to be obtained from a subcontractor under the contract, the Contractor shall use this clause, Rights in Data, in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the District's or the Contractor's rights in that subcontractor data or computer software which is required for the District.

E. Source Code Escrow

1. For all computer software furnished to the District with the rights specified in section B.2, the Contractor shall furnish to the District, a copy of the source code with such rights of the scope as specified in section B.2 of this clause. For all computer software furnished to the District with the restricted rights specified in section B.1 of this clause, the District, if the Contractor either directly or through a successor or affiliate shall cease to provide the maintenance or warranty services provided the District under the contract or any paid-up maintenance agreement, or if the Contractor should be declared insolvent by a court of competent jurisdiction, shall have the right to obtain, for its own and sole use only, a single copy of the current version of the source code supplied under the contract, and a single copy of the documentation associated therewith, upon payment to the person in control of the source code the reasonable cost of making each copy.

2. If the Contractor or Product manufacturer/developer of software furnished to the District with the rights specified in section B.1 of this clause offers the source code or source code escrow to any other commercial customers, the Contractor shall either: (1) provide the District with the source code for the Product; (2) place the source code in a third party escrow arrangement with a designated escrow agent who shall be named and identified to the District, and who shall be directed to release the deposited source code in accordance with a standard escrow arrangement acceptable to the District; or (3) will certify to the District that the Product manufacturer/ developer has named the District as a named beneficiary of an established escrow arrangement with its designated escrow agent who shall be named and identified to the District, and who shall be directed to release the deposited source code in accordance with the terms of escrow.

3. The Contractor shall update the source code, as well as any corrections or enhancements to the source code, for each new release of the Product in the same manner as provided above, and certify such updating of escrow to the District in writing.

F. Indemnification and Limitation of Liability

The Contractor shall indemnify and save and hold harmless the District, its officers, agents and employees acting within the scope of their official duties against any liability, including costs and expenses, (i) for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any data furnished under this contract, or (ii) based upon any data furnished under this contract, or based upon libelous or other unlawful matter contained in such data.

I.6 OTHER CONTRACTORS

The Contractor shall not commit or permit any act that will interfere with the performance of work by another District contractor or by any District employee.

I.7 SUBCONTRACTS – NOT APPLICABLE

The Contractor hereunder shall not subcontract any of the Contractor's work or services to any subcontractor without the prior written consent of the CO. Any work or service so subcontracted shall be performed pursuant to a subcontract agreement, which the District will have the right to review and approve prior to its execution by the Contractor. Any such subcontract shall specify that the Contractor and the subcontractor shall be subject to every provision of this contract. Notwithstanding any such subcontract approved by the District, the Contractor shall remain liable to the District for all Contractor's work and services required hereunder.

I.8 INSURANCE

A. GENERAL REQUIREMENTS. The Contractor at its sole expense shall procure and maintain, during the entire period of performance under this contract, the types of insurance specified below. The Contractor shall have its insurance broker or insurance company submit a Certificate of Insurance to the CO giving evidence of the required coverage prior to commencing performance under this contract. In no event shall any work be performed until the required Certificates of Insurance signed by an authorized representative of the insurer(s) have been provided to, and accepted by, the CO. All insurance shall be written with financially responsible companies authorized to do business in the District of Columbia or in the jurisdiction where the work is to be performed and have an A.M. Best Company rating of A- / VII or higher. Should the Contractor decide to engage a subcontractor for segments of the work under this contract, then, prior to commencement of work by the subcontractor, the Contractor shall submit in writing the name and brief description of work to be performed by the subcontractor on the Subcontractors Insurance Requirement Template provided by the CA, to the Office of Risk Management (ORM). ORM will determine the insurance requirements applicable to the subcontractor and promptly deliver such requirements in writing to the Contractor and the CA. The Contractor must provide proof of the subcontractor's required insurance prior to commencement of

work by the subcontractor. If the Contractor decides to engage a subcontractor without requesting from ORM specific insurance requirements for the subcontractor, such subcontractor shall have the same insurance requirements as the Contractor.

All required policies shall contain a waiver of subrogation provision in favor of the Government of the District of Columbia.

The Government of the District of Columbia shall be included in all policies required hereunder to be maintained by the Contractor and its subcontractors (except for workers' compensation and professional liability insurance) as an additional insureds for claims against The Government of the District of Columbia relating to this contract, with the understanding that any affirmative obligation imposed upon the insured Contractor or its subcontractors (including without limitation the liability to pay premiums) shall be the sole obligation of the Contractor or its subcontractors, and not the additional insured. The additional insured status under the Contractor's and its subcontractors' Commercial General Liability insurance policies shall be affected using the ISO Additional Insured Endorsement form CG 20 10 11 85 (or CG 20 10 07 04 **and** CG 20 37 07 04) or such other endorsement or combination of endorsements providing coverage at least as broad and approved by the CO in writing. All of the Contractor's and its subcontractors' liability policies (except for workers' compensation and professional liability insurance) shall be endorsed using ISO form CG 20 01 04 13 or its equivalent so as to indicate that such policies provide primary coverage (without any right of contribution by any other insurance, reinsurance or self-insurance, including any deductible or retention, maintained by an Additional Insured) for all claims against the additional insured arising out of the performance of this Statement of Work by the Contractor or its subcontractors, or anyone for whom the Contractor or its subcontractors may be liable. These policies shall include a separation of insureds clause applicable to the additional insured.

If the Contractor and/or its subcontractors maintain broader coverage and/or higher limits than the minimums shown below, the District requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor and subcontractors.

1. Commercial General Liability Insurance ("CGL") - The Contractor shall provide evidence satisfactory to the CO with respect to the services performed that it carries a CGL policy, written on an occurrence (not claims-made) basis, on Insurance Services Office, Inc. ("ISO") form CG 00 01 04 13 (or another occurrence-based form with coverage at least as broad and approved by the CO in writing), covering liability for all ongoing and completed operations of the Contractor, including ongoing and completed operations under all subcontracts, and covering claims for bodily injury, including without limitation sickness, disease or death of any persons, injury to or destruction of property, including loss of use resulting therefrom, personal and advertising injury, and including coverage for liability arising out of an Insured Contract (including the tort liability of another assumed in a contract) and acts of terrorism (whether caused by a foreign or domestic source). Such coverage shall have limits of liability of not less than $1,000,000 each occurrence, a $2,000,000 general aggregate (including a per location or per project aggregate limit endorsement, if applicable) limit, a $1,000,000 personal and advertising injury limit, and a $2,000,000 products-completed operations aggregate limit.

2. Automobile Liability Insurance - The Contractor shall provide evidence satisfactory to the CO of commercial (business) automobile liability insurance written on ISO form CA 00 01 10 13 (or another form with coverage at least as broad and approved by the CO in writing) including

coverage for all owned, hired, borrowed and non-owned vehicles and equipment used by the Contractor, with minimum per accident limits equal to the greater of (i) the limits set forth in the Contractor's commercial automobile liability policy or (ii) $1,000,000 per occurrence combined single limit for bodily injury and property damage.

1. Workers' Compensation Insurance - The Contractor shall provide evidence satisfactory to the CO of Workers' Compensation insurance in accordance with the statutory mandates of the District of Columbia or the jurisdiction in which the contract is performed.

   Employer's Liability Insurance - The Contractor shall provide evidence satisfactory to the CO of employer's liability insurance as follows: $500,000 per accident for injury; $500,000 per employee for disease; and $500,000 for policy disease limit.
   All insurance required by this paragraph 3 shall include a waiver of subrogation endorsement for the benefit of Government of the District of Columbia.

2. Cyber Liability Insurance - The Contractor shall provide evidence satisfactory to the Contracting Officer of Cyber Liability Insurance, with limits not less than $2,000,000 per occurrence or claim, $2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall include, but not limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations. Limits may not be shared with other lines of coverage.

3. Sexual/Physical Abuse & Molestation - The Contractor shall provide evidence satisfactory to the Contracting Officer with respect to the services performed that it carries $1,000,000 per occurrence limits; $2,000,000 aggregate of affirmative abuse and molestation liability coverage. Coverage should include physical abuse, such as sexual or other bodily harm and non-physical abuse, such as verbal, emotional or mental abuse; any actual, threatened or alleged act; errors, omission or misconduct. This insurance requirement will be considered met if the general liability insurance includes an affirmative sexual abuse and molestation endorsement for the required amounts. So called "silent" coverage under a commercial general liability or professional liability policy will not be acceptable. Limits may not be shared with other lines of coverage.

4. Commercial Umbrella or Excess Liability - The Contractor shall provide evidence satisfactory to the CO of commercial umbrella or excess liability insurance with minimum limits equal to the greater of (i) the limits set forth in the Contractor's umbrella or excess liability policy or (ii) $5,000,000 per occurrence and $5,000,000 in the annual aggregate, following the form and in excess of all liability policies. **All** liability coverages must be scheduled under the umbrella and/or excess policy. The insurance required under this paragraph shall be written in a form that annually reinstates all required limits. Coverage shall be primary to any insurance, self-insurance or reinsurance maintained by the District and the "other insurance" provision must be amended in accordance with this requirement and principles of vertical exhaustion.

B. PRIMARY AND NONCONTRIBUTORY INSURANCE

The insurance required herein shall be primary to and will not seek contribution from any other insurance, reinsurance or self-insurance including any deductible or retention, maintained by the Government of the District of Columbia.

C. DURATION. The Contractor shall carry all required insurance until all contract work is accepted by the District of Columbia and shall carry listed coverages for ten years for construction projects following final acceptance of the work performed under this contract and two years for non-construction related contracts.

D. LIABILITY. These are the required minimum insurance requirements established by the District of Columbia. However, the required minimum insurance requirements provided above will not in any way limit the contractor's liability under this contract.

E. CONTRACTOR'S PROPERTY. Contractor and subcontractors are solely responsible for any loss or damage to their personal property, including but not limited to tools and equipment, scaffolding and temporary structures, rented machinery, or owned and leased equipment. A waiver of subrogation shall apply in favor of the District of Columbia.

F. MEASURE OF PAYMENT. The District shall not make any separate measure or payment for the cost of insurance and bonds. The Contractor shall include all of the costs of insurance and bonds in the contract price.

G. NOTIFICATION. The Contractor shall ensure that all policies provide that the CO shall be given thirty (30) days prior written notice in the event of coverage and / or limit changes or if the policy is canceled prior to the expiration date shown on the certificate. The Contractor shall provide the CO with ten (10) days prior written notice in the event of non-payment of premium. The Contractor will also provide the CO with an updated Certificate of Insurance should its insurance coverages renew during the contract.

H. CERTIFICATES OF INSURANCE. The Contractor shall submit certificates of insurance giving evidence of the required coverage as specified in this section prior to commencing work. Certificates of insurance must reference the corresponding contract number. Evidence of insurance shall be submitted to:

The Government of the District of Columbia
And mailed to the attention of:

Candace Butler,
Chief Procurement Officer
Office of Contracts and Acquisitions
District of Columbia Public Schools
1200 First St. NE, 9th Floor
Washington, DC 20002
Email: candace Butler@k12.dc.gov

The CO may request, and the Contractor shall promptly deliver updated certificates of insurance, endorsements indicating the required coverages, and/or certified copies of the insurance policies. If the insurance initially obtained by the Contractor expires prior to completion of the contract, renewal certificates of insurance and additional insured and other endorsements shall be furnished to the CO prior to the date of expiration of all such initial insurance. For all coverage required to be maintained after completion, an additional certificate of insurance evidencing such coverage shall be submitted to the CO on an annual basis as the coverage is renewed (or replaced).

I. DISCLOSURE OF INFORMATION. The Contractor agrees that the District may disclose the name and contact information of its insurers to any third party which presents a claim against the District for any damages or claims resulting from or arising out of work performed by the Contractor, its agents, employees, servants or subcontractors in the performance of this contract.

J. CARRIER RATINGS. All Contractor's and its subcontractors' insurance required in connection with this contract shall be written by insurance companies with an A.M. Best Insurance Guide rating of at least A-VII (or the equivalent by any other rating agency) and licensed in the District.

I.9 EQUAL EMPLOYMENT OPPORTUNITY

In accordance with the District of Columbia Administrative Issuance System, Mayor's Order 85-85 dated June 10, 1985, the forms for completion of the Equal Employment Opportunity Information Report are incorporated herein as Section J.3. An award cannot be made to any offeror who has not satisfied the equal employment requirements.

I.10 ORDER OF PRECEDENCE

The contract awarded as a result of this RFP will contain the following clause:

ORDER OF PRECEDENCE

I.10.1 A conflict in language shall be resolved by giving precedence to the document in the highest order of priority that contains language addressing the issue in question. The following documents are incorporated into the contract by reference and made a part of the contract in the following order of precedence:

1) An applicable Court Order, if any
2) Contract document
3) Standard Contract Provisions
4) Contract attachments other than the Standard Contract Provisions
5) RFP, as amended
6) BAFOs (in order of most recent to earliest)
7) Proposal

I.11 DISPUTES

Delete Article 14, Disputes, of the Standard Contract Provisions dated July 2010 for use with District of Columbia Government Supplies and Services Contracts and substitute the following Article 14, Disputes, in its place:

I.11.1 SETTLEMENT OF OFFER PROTESTS, DISPUTES, AND CONTRACTUAL ISSUES

The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction. Pursuant to 7 CFR §3016.36(b)(12), DCPS must in all instances disclose all information regarding a protest to OSSE.

14. Disputes

All disputes arising under or relating to the contract shall be resolved as provided herein.

(1) **Claims by the Contractor against the District: Claim**: as used in paragraph (a) of this clause, means a written assertion by the Contractor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant

a. All claims by a Contractor against the District arising under or relating to a contract shall be in writing and shall be submitted to the CO for a decision. The Contractor's claim shall contain at least the following:
    a. A description of the claim and the amount in dispute;

    b. Data or other information in support of the claim;

    c. A brief description of the Contractor's efforts to resolve the dispute prior to filing the claim; and

    d. The Contractor's request for relief or other action by the CO.

(2) The CO may meet with the Contractor in a further attempt to resolve the claim by agreement.

(3) The CO shall issue a decision on any claim within 120 calendar days after receipt of the claim. Whenever possible, the CO shall take into account factors such as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the Contractor.

(4) The CO's written decision shall do the following:

(i) Provide a description of the claim or dispute;
(ii) Refer to the pertinent contract terms;
(iii) State the factual areas of agreement and disagreement;
(iv) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;
(v) If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;
(vi) Indicate that the written document is the CO's final decision; and
(vii) Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.

(5) Failure by the CO to issue a decision on a contract claim within 120 days of receipt of the claim will be deemed to be a denial of the claim, and will authorize the commencement of an appeal to the Contract Appeals Board as provided by D.C. Official Code § 2 360.04.

(6) If a contractor is unable to support any part of its claim and it is determined that the inability is attributable to a material misrepresentation of fact or fraud on the part of the Contractor, the Contractor shall be liable to the District for an amount equal to the unsupported part of the claim in addition to all costs to the District attributable to the cost of reviewing that part of the Contractor's claim. Liability under this paragraph (a)(6) shall be determined within six (6) years of the commission of the misrepresentation of fact or fraud.

(7) Pending final decision of an appeal, action, or final settlement, the Contractor shall proceed diligently with performance of the contract in accordance with the decision of the CO.

(b) **Claims by the District against the Contractor**: Claim as used in paragraph (b) of this clause, means a written demand or written assertion by the District seeking, as a matter of right, the payment of money in a sum certain, the adjustment of contract terms, or other relief arising under or relating to the contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.

(1) The CO shall decide all claims by the District against a contractor arising under or relating to a contract.

(2) The CO shall send written notice of the claim to the contractor. The CO's written decision shall do the following:

(i) Provide a description of the claim or dispute;

(ii) Refer to the pertinent contract terms;
(iii) State the factual areas of agreement and disagreement;
(iv) State the reasons for the decision, including any specific findings of fact, although specific findings of fact are not required and, if made, shall not be binding in any subsequent proceeding;
(v) If all or any part of the claim is determined to be valid, determine the amount of monetary settlement, the contract adjustment to be made, or other relief to be granted;
(vi) Indicate that the written document is the CO's final decision; and
(vii) Inform the Contractor of the right to seek further redress by appealing the decision to the Contract Appeals Board.

(3) The CO shall support the decision by reasons and shall inform the Contractor of its rights as provided herein.

(4) Before or after issuing the decision, the CO may meet with the Contractor to attempt to resolve the claim by agreement.

(5) The authority contained in this paragraph (b) shall not apply to a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another District agency is specifically authorized to administer, settle or determine.

(6) This paragraph shall not authorize the CO to settle, compromise, pay, or otherwise adjust any claim involving fraud.

(c) Decisions of the CO shall be final and not subject to review unless the Contractor timely commences an administrative appeal for review of the decision, by filing a complaint with the Contract Appeals Board, as authorized by D.C. Official Code § 2-360.04.

(d) Pending final decision of an appeal, action, or final settlement, the Contractor shall proceed diligently with performance of the contract in accordance with the decision of the CO.

I.12 CHANGES

Delete clause 15, Changes, of the Standard Contract Provisions dated July 2010 for use with District of Columbia Government Supplies and Services Contracts and substitute the following clause 15, Changes in its place:

15. Changes:

(a) The CO may, at any time, by written order, and without notice to the surety, if any, make changes in the contract within the general scope hereof. If such change causes an increase or decrease in the cost of performance of the contract, or in the time required for performance, an equitable adjustment shall be made. Any claim for adjustment for a change within the general scope must be asserted within ten (10) days from the date the change is ordered; provided, however, that the CO, if he or she determines that the facts justify such action, may receive, consider and adjust any such claim asserted at any time prior to the date of final settlement of the contract. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined as provided in clause 14 Disputes.

(b) The District shall not require the Contractor, and the Contractor shall not require a subcontractor, to undertake any work that is beyond the original scope of the contract or subcontract, including work under a District-issued change order, when the additional work increases the contract price beyond the not-to-exceed price or negotiated maximum price of this contract, unless the CO:

(1) Agrees with Contractor, and if applicable, the subcontractor on a price for the additional work;
(2) Obtains a certification of funding to pay for the additional work;
(3) Makes a written, binding commitment with the Contractor to pay for the additional work within 30-days after the Contractor submits a proper invoice; and
(4) Provides the Contractor with written notice of the funding certification.

(c) The Contractor shall include in its subcontracts a clause that requires the Contractor to:

(1) Within 5 business days of its receipt of notice the approved additional funding, provide the subcontractor with notice of the amount to be paid to the subcontractor for the additional work to be performed by the subcontractor;
(2) Pay the subcontractor any undisputed amount to which the subcontractor is entitled for the additional work within 10 days of receipt of payment from the District; and
(3) Notify the subcontractor and CO in writing of the reason the Contractor withholds any payment from a subcontractor for the additional work.

(d) Neither the District, Contractor, nor any subcontractor may declare another party to be in default, or assess, claim, or pursue damages for delays, until the parties to agree on a price for the additional work.

I.13 NON-DISCRIMINATION CLAUSE

Delete clause 19, Non-Discrimination Clause, of the Standard Contract Provisions dated July 2010 for use with District of Columbia Government Supplies and Services Contracts and substitute the following clause 19, Non-Discrimination Clause, in its place:

19. Non-Discrimination Clause:

(a) The Contractor shall not discriminate in any manner against any employee or applicant for employment that would constitute a violation of the District of Columbia Human Rights Act, effective December 13, 1977, as amended (D.C. Law 2-38; D.C. Official Code § 2-1401.01 et seq.) ("Act", as used in this clause). The Contractor shall include a similar clause in all subcontracts, except subcontracts for standard commercial supplies or raw materials. In addition, the Contractor agrees, and any subcontractor shall agree, to post in conspicuous places, available to employees and applicants for employment, a notice setting forth the provisions of this non-discrimination clause as provided in section 251 of the Act.

(b) Pursuant to Mayor's Order 85-85, (6/10/85), Mayor's Order 2002-175 (10/23/02), Mayor's Order 2011-155 (9/9/11) and the rules of the Office of Human Rights, Chapter 11 of Title 4 of the D.C. Municipal Regulations, the following clauses apply to the contract:

(1) The Contractor shall not discriminate against any employee or applicant for employment because of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, genetic information, disability, matriculation, political affiliation, or credit information. Sexual harassment is a form of sex

discrimination which is prohibited by the Act. In addition, harassment based on any of the above protected categories is prohibited by the Act.

(2) The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, genetic information, disability, matriculation, political affiliation, or credit information. The affirmative action shall include, but not be limited to the following:

(a) employment, upgrading or transfer;
(b) recruitment, or recruitment advertising;
(c) demotion, layoff or termination;
(d) rates of pay, or other forms of compensation; and
(e) selection for training and apprenticeship.

(3) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting agency, setting forth the provisions in paragraphs 19(b)(1) and (b)(2) concerning non-discrimination and affirmative action.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment pursuant to the non-discrimination requirements set forth in paragraph 19(b)(2).

(5) The Contractor agrees to send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the contracting agency, advising the said labor union or workers' representative of that contractor's commitments under this nondiscrimination clause and the Act, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor agrees to permit access to its books, records, and accounts pertaining to its employment practices, by the Chief Procurement Officer or designee, or the Director of the Office of Human Rights or designee, for purposes of investigation to ascertain compliance with the Act, and to require under terms of any subcontractor agreement each subcontractor to permit access of such subcontractors' books, records, and accounts for such purposes.

(7) The Contractor agrees to comply with the provisions of the Act and with all guidelines for equal employment opportunity applicable in the District adopted by the Director of the Office of Human Rights, or any authorized official.

(8) The Contractor shall include in every subcontract the equal opportunity clauses, i.e., paragraphs 19(b)(1) through (b)(9) of this clause, so that such provisions shall be binding upon each subcontractor.

(9) The Contractor shall take such action with respect to any subcontract as the CO may direct as a means of enforcing these provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the District to enter into such litigation to protect the interest of the District.

I.4 CONTINUITY OF SERVICES

I.14.1 The Contractor recognizes that the services provided under this contract are vital to the District and must be continued without interruption and that, upon contract expiration or termination, a successor, either the District or another contractor, at the District's option, may continue to provide these services. To that end, the Contractor agrees to:

I.14.1.1 Furnish phase-out, phase-in (transition) training; and

I.14.1.2Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

I.14.2 The Contractor shall, upon the CO's written notice:

I.14.2.1 Furnish phase-in, phase-out services for up to 90 days after this contract expires and

I.14.2.2 Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the CO's approval.

I.14.3 The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

I.14.4 The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

I.14.5 Only in accordance with a modification issued by the CO, the Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

I.15 ESTIMATED QUANTITIES

I.15.1 It is the intent of the District to secure a contract for all of the needs of the designated agencies for items specified herein which may occur during the contract term. The District agrees that it will purchase its requirements of the articles or services included herein from the Contractor. Articles or services specified herein have a history of repetitive use in the District agencies. The estimated quantities stated in the RFP reflect the best estimates available. They shall not be construed to limit the quantities which may be ordered from the Contractor by the District or to relieve the Contractor of his obligation to fill all such orders. Orders will be placed from time to time if and when needs arise for delivery, all charges prepaid, to the ordering agency. The District does not guarantee to order any specific quantities of any item(s) or work hours of service.

I.16 CONTRACTS IN EXCESS OF ONE MILLION DOLLARS

I.16.1 Any contract in excess of $1,000,000 shall not be binding or give rise to any claim or demand against the District until approved by the Council of the District of Columbia and signed by the CO.

I.17 GOVERNING LAW

I.17.1 This contract, and any disputes arising out of or related to this contract, shall be governed by, and construed in accordance with, the laws of the District of Columbia.

I.18 TERMINATION

a) Neither the Contractor nor the SFA shall be responsible for any losses resulting if the fulfillment of the terms of the contract shall be delayed or prevented by wars, acts of public enemies, strikes, fires, floods, acts of God, or for any acts not within the control of either the Contractor or the SFA, respectively, and which by the exercise of due diligence it is unable to prevent.

b) The District reserves the right to terminate this contract if the Contractor fails to comply with any of the requirements of this contract. The District shall notify the Contractor, in writing, of specific instances of non-compliance. In instances where the Contractor has been notified on non-compliance with the terms of the contract, and has not taken immediate corrective action, the District shall have the right, upon written notice, to immediately terminate the contract and the contractor shall be liable for any damages incurred by the District. The District shall negotiate a re-purchase contract on a competitive basis to arrive at a fair and reasonable price.

c) The District shall give written notice to the Contractor and terminate the right of the Contractor to proceed under this contract if the District finds that gratuities in the form of entertainment, gifts, or otherwise, were offered or given by the contractor to any officer or employee of the District with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending of the contract; provided that the existence of the facts upon which the District makes such findings shall be an issue and may be reviewed in any competent court.

d) In the event this contract is terminated, as provided in paragraph (d) hereof, the District shall be entitled:

   a. To pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor, and
   b. As a penalty in addition to any other damages in an amount which shall not be less than three, nor more than three times the cost incurred by the Contractor in providing any such gratuities to any such officer or employee.

e) The rights and remedies of the District provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

I.18.1 TERMINATION FOR THE CONVENIENCE OF THE GOVERNMENT

I.18.1 DCPS has the right to terminate the contract for the convenience of the government, DCMR 27, Section 3702, and the FAR 52.212-4(l) -- Termination for Convenience of the Government (Fixed-Price) (Short Form).

I.18.2 TERMINATION FOR DEFAULT

I.18.2 DCPS has the right to terminate the contract for default of the contractor on satisfactory performance in accordance with the terms and conditions of the contract, 27 DCMR Section 3710, and the FAR Clause 52.212-4(m) -- Default (Fixed-Price Supply and Service) (Apr 1984).

I.18.3 DCPS reserves the right to terminate the contract for default without advance notice in the event the contractor is closed for the reasons cited in C.5.2 above.

I.19 CONTRACT WORK HOURS AND SAFETY STANDARDS

I.19.1 The **Contractor** shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (Act), 40 U.S.C §327-330, as supplemented by the Department of Labor regulations, 29 CFR Part 5. Under Section 103 of the Act, the **Contractor** shall be required to compute the wages of every laborer on the basis of a standard workday of eight hours and a standard workweek of 40 hours. Work in excess of the standard workday or standard workweek is permissible, provide that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or forty hours in any work week.

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SECTION J: ATTACHMENTS

The following list of attachments is incorporated into the solicitation by reference.

Attachment Number	Document	To Be Submitted with Offer
J.1	Government of the District of Columbia Standard Contract Provisions for Use with the Supplies and Services Contracts (July 2010) available at www.ocp.dc.gov click on "Solicitation Attachments"	No
J.2	U.S. Department of Labor Wage Determination N0.: 2015-4282, Revision No.: 17, Date of Revision: 04/23/2020	No
J.3	Office of Local Business Development Equal Employment Opportunity Information Report and Mayor's Order 85-85 available at www.ocp.dc.gov click on "Solicitation Attachments"	Yes
J.4	Department of Employment Services First Source Employment Agreement available at http://ocp.dc.gov, under Quick Links click on "Required Solicitation Documents"	N/A
J.5	Way to Work Amendment Act of 2006 - Living Wage Notice available at http://ocp.dc.gov, under Quick Links click on "Required Solicitation Documents"	No
J.6	Way to Work Amendment Act of 2006 - Living Wage Fact Sheet available at http://ocp.dc.gov, under Quick Links click on "Required Solicitation Documents"	No
J.7	Tax Certification Affidavit available at http://ocp.dc.gov, under Quick Links click on "Required Solicitation Documents"	Yes
J.8	Certificate of Clean Hands	Yes
J.9	Bidder/Offeror Certification Form	Yes
J.10	Debarment & Suspension	Yes
J.11	2021-2022 School Year Calendar https://dcps.dc.gov/sites/default/files/dc/sites/dcps/publication/attachments/Final-SY2021-22_SY2022-23_English.pdf.	No
J.12	Spreadsheet List of Grocery Items --Pricing	Yes
J.13	CERTIFICATE OF INDEPENDENT PRICE DETERMINATION	Yes
J.14	PERMANENT CERTIFICATION REGARDING LOBBYING	Yes
J.15	7 CFR § 210.21 – Procurement. 7 CFR 210.21 (d).	No
J.16	Memo SP 38-2017	No
J.17	All licenses as required in this Solicitation	Yes
J.18	Insurance Certificate (Clause I.18)	Yes

NOTE NUMBER 1: Use the link https://ocp.dc.gov to obtain and complete all listed attachments following the instructions thoroughly.
NOTE NUMBER 2: Offerors shall be fully responsible to complete and send all documents denote "Yes" in Section J and throughout this solicitation.

SECTION K: REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS

K. CERTIFICATION REGARDING A DRUG-FREE WORKPLACE (JULY 1990)

K.1 Definitions. As used in this provision:

K.1.1 Controlled substance: means a controlled substance in schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. § 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

K.1.2 Conviction: means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the federal or state criminal drug statutes.

K.1.3 Criminal drug statute: means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession or use of any controlled substance.

K.1.4 Drug-free workplace: means the site(s) for the performance of work done by the Contractor in connection with a specific contract at which employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

K.1.5 Employee: means an employee of a contractor directly engaged in the performance of work under a District contract. "Directly engaged" is defined to include all direct cost employees and any other contractor employee who has other than a minimal impact or involvement in contract performance.

K.1.6 Individual: means a bidder/contractor that has no more than one employee including the bidder/contractor.

K.2 The Contractor, if other than an individual, shall within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration:

1. Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

2. Establish an ongoing drug-free awareness program to inform such employees about:
    a. The dangers of drug abuse in the workplace; and,

b. Any available drug counseling, rehabilitation, and employee assistance programs; and,
c. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

3. Provide all employees engaged in performance of the contract with a copy of the statement required by section K.2(1) of this clause;

4. Notify such employees in writing in the statement required by section K.2.(1) of this clause that, as a condition of continued employment on this contract, the employee will:
   d. Abide by the terms of the statement; and
   e. Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction.
5. Notify the Contracting Officer in writing within 10 days after receiving notice under section K.2. (4)(b) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
6. Within 30 days after receiving notice under section K.3.(4)(b) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:
   f. Take appropriate personnel action against such employee, up to and including termination; or
   g. Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency; and
   h. Make a good faith effort to maintain a drug-free workplace through implementation of section K.(1) through K.2.(6) of this clause.

K.3 The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.

K.4 In addition to other remedies available to the District, the Contractor's failure to comply with the requirements of sections K.2 or K.3 of this clause may render the Contractor subject to suspension of contract payments, termination of the contract for default, and suspension or debarment.

K.5 The Contractor shall complete the Bidder/Offeror Certification as described in Section J.9.

SECTION L: INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS

L.1 METHOD OF AWARD – MOST ADVANTAGEOUS TO THE DISTRICT

L.1.1 The District reserves the right to accept/reject any and/or all proposals resulting from this solicitation. The CO may reject all proposals or waive any minor informality or irregularity in proposal received whenever it is determined that such action is in the best interest of the District.

L.1.2 The District intends to award a single contract resulting from this solicitation to the responsive and responsible offeror whose offer conforming to the solicitation will be most advantageous to the District, cost or price, technical and other factors specified elsewhere in this solicitation considered.

L.2 SELECTION OF NEGOTIATION PROCESS

In accordance with 27 DCMR § 1632, after evaluation of the proposals using only the criteria stated in the RFP and in accordance with weightings provided in the RFP, the CO may elect to proceed with any method of negotiations, discussions or award of the contract without negotiations, which is set forth in subsections (a), (b), (c), or (d) of 27 DCMR § 1632.1. If the CO elects to proceed with negotiations under subsection (c) of 27 DCMR §1632.1, the CO may limit, for purposes of efficiency, the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

L.3 PROPOSAL ORGANIZATION AND CONTENT:

L.3.1 The offeror shall submit one (1) original ***electronic*** copy of the proposal and associated attachments. The proposals shall be submitted in two parts titled, "Technical Proposal" and "Price Proposal." The electronic proposal shall have a 12-point font size on 8.5" by 11" paper size. Each proposal shall be submitted via dcpsoca.inquiries@k12.dc.gov, and file marked: Proposal in Response to Solicitation No. GAGA-2021-R-0103 "Produce Distribution." Telephonic, telegraphic, and facsimile proposals will not be accepted. The email transmission must include the name of bidder/offeror, email address, and telephone number.

L.3.2 All attachments shall be submitted as a PDF file. The District will not be responsible for corruption of any file submitted. If the submitted file cannot be viewed and printed as submitted, it will not be considered

L.3.3 The offerors shall submit (1) technical proposal, and (2) a price proposal. **Please note that each attachment is limited to a maximum size of 25 MB.**

L.3.4 Offerors are fully responsible to submit Certificate Of Insurance (COI) and all attachments listed in Section J and other parts of the solicitation.

L.3.5 Offerors are directed to the specific proposal evaluation criteria found in Section M of this solicitation "Evaluation Factors." The offeror shall respond to each factor in a way that will allow the District to meaningful evaluation of the offeror's response. The offeror shall submit information in a clear, concise, factual, and logical manner providing a comprehensive description of services and delivery thereof. The information requested below for the technical proposal shall facilitate meaningful

evaluation for all proposals. The technical proposal must contain sufficient detail to provide a clear and concise response fully reflecting the way the offeror proposes to fully meet the requirements in Section C, and other part of this Solicitation.

L.3.6 It is solely the offeror's responsibility to complete, sign and submit all Representations, Certifications and Acknowledgments. Failure to do so may result in a proposal rejection.

L.3.7 The Technical Volume/Binder proposal shall start with an Executive Summary Page. The Executive Summary shall provide an overview and synopsis of the proposal, and should be an aid to understanding the organization, content, and interrelationship of the proposal material. The offeror shall provide a brief history of the creation and development of the company and a description of the legal structure and organization of the company. Pertinent aspects of the proposed approach including teaming approaches, if any, subcontracting, and relevant corporate experience and expertise on similar programs shall be identified. Particular proposal advantages or unique approaches should be highlighted.

Price information **shall not** be included in this document. Reference to the proposal factors containing substantiating information should be given when possible. Identify company officials/point of contact to be contacted for information about the proposal and/or notified of the selection decision.

L.3.8 TECHNICAL PROPOSAL – FACTOR A

L.3.8.1 Sub Factor 1: Breadth of Food Service Industry Operation

a. The Offeror shall provide a list of all K-12 school districts and/or organizations for which the Contractor(s) is both currently and formerly under contract, and all within the last five years, to provide food services.
b. The Offeror(s) shall provide the following information for each current customer:
    1. Name and address of school district and/or organization;
    2. Length of time as a service provider;
    3. The volume of items delivered to each account per day and year;
    4. The number of line staff employed, number of management staff employed, operations organizational chart;
c. The Offeror shall provide POC and key information detailing the dedicated K-12 representative and specific child nutrition program features that are advantageous for the District and superior to competitors.

L.3.8.2 Subfactor 2: Fulfillment of Required Items

a. The Offeror must confirm as part of this procurement which items contained in J.12 are in regular stock; items that are special order and can be held at the Bidder's warehouse for "just-in-time" distribution; items that are special order and are required to be "force shipped" in full immediately following distributor receipt, and any items requiring extended lead times. The Offeror shall provide a list of items that are not regularly stocked, those which will be stocked specifically for DCPS FNS, and/or those that require additional lead times or special handling; this includes items that would not be received at a warehouse and distributed through normal routing on a regular, routine delivery cycle.

L.3.8.3 Subfactor 3: References from existing customers for superior service

a. The Offeror **shall provide** at minimum, **5 letters** of recommendation; and provide the contact information of at minimum 5 points of contact where performance may be verified by the evaluation panel. The recommendation letter should provide the following information:
    1. Length and value of the contract
    2. Was the contractor deficient? If yes, how were the deficiencies corrected?

b. The District reserves the right to contact the references to verify information.

L.3.9 FACTOR B: PROCURMENT & REPORTING

L.3.9.1 Subfactor 1: Understanding of, and Compliance with, the Buy American Provision

a. Offerors will submit evidence of its engagement with Buy American through organizationally issued policy communications with all customers or individuals, including copies of any communications of waivers or other correspondence requested and issued to customers or State Agencies for the Provision due to supply chain interruptions.

L.3.9.2 Subfactor 2: Records of Safety

a. The Offeror shall submit all applicable safety inspections between October 2019 and March 2021. The submission shall include reports from Federal and Local entities; and, it must demonstrate a superior level of warehouse and food handling safety.

L.3.9.3 Subfactor 3: Procurement reporting

a. The proposal shall include information illustrating the Offeror's ability to provide flexible reporting of data to identify item usage and sort through a variety of trends including:
    a. Product name
    b. Unit type purchased (cases, bunches, packs, etc.)
    c. Number of units purchased,
    d. Volume per unit (ounces, pounds, etc.)
    e. Name and location of each supplier throughout the supply chain to include all:
        i. Distributors
        ii. Wholesalers
        iii. Processors
        iv. Manufacturers
        v. Shipper(s) and farm(s) of origin
        vi. Farm or ranch where the product is sourced
        vii. Total dollar value spent at the respective farm or ranch
b. Offerors will submit sample reporting that clearly and professionally delineates all items required in this subfactor.
c. The successful Offeror will be able to provide a majority of this reporting through its customer-facing, electronic ordering and reporting system; and, will provide a reference guide or instructions as to how users are able to retrieve the data from it.

L.4 REQUIREMENT FOR AN ELECTRONIC COPY OF PROPOSALS TO BE MADE AVAILABLE TO THE PUBLIC

L.4.1 In addition to the proposal submission requirements in Section L.3 above, the offeror must submit an electronic copy of its proposal, redacted in accordance with any applicable exemptions from disclosure under D.C. Official Code § 2-534. Redacted copies of the offeror's proposal must be on the flash drive submitted as part of the proposal package to the contact person designated in the solicitation. D.C. Official Code § 2-536(b) requires the District to make available electronically copies of records that must be made public. The District's policy is to release documents relating to District proposals following award of the contract, subject to applicable Freedom of Information Act (FOIA) exemption under § 2-534(a)(1). Successful proposals will be published on the DCPS website in accordance with D.C. Official Code § 2-361.04, subject to applicable FOIA exemptions.

L.5 PROPOSAL SUBMISSION DATE AND TIME, AND LATE SUBMISSIONS, LATE MODIFICATIONS, WITHDRAWAL OR MODIFICATION OF PROPOSALS AND LATE PROPOSALS:

L.5.1 Proposal Submission

L.5.1.1 Proposals must be submitted **no later than 2:00 pm EST, July 15, 2021.** Proposals, modifications to proposals, or requests for withdrawals that are received in the designated District office after the exact local time specified above, are "late" and shall be considered only if they are received before the award is made and one (1) or more of the following circumstances apply:

(b) The proposal or modification was sent by registered or certified mail not later than the fifth (5th) day before the date specified for receipt of offers;

(c) The proposal or modification was sent by mail and it is determined by the CO that the late receipt at the location specified in the solicitation was caused by mishandling by the District, or

(d) The proposal is the only proposal received.

Offerors shall submit proposals via email at dcpsoca.inquiries@k12.dc.gov

L.5.2 Withdrawal or Modification of Proposals

An offeror may modify or withdraw its proposal via email notification to the Contracting Officer at any time before the closing date and time for receipt of proposals.

L.5.3 Late Proposals

A late proposal, late modification, or late request for withdrawal of a proposal that is not considered will be held unopened, unless opened for identification, until after award and then retained with unsuccessful proposals resulting from this solicitation.

L.5.4 Late Modifications

A late modification of a successful proposal, which makes its terms more favorable to the District, will be considered at any time it is received and may be accepted.

L.5.5 RESERVED

L.6 QUESTIONS ON THE SOLICITATION:

L.6.1 All questions relating to this solicitation, the offeror shall submit the question electronically via email to dcpsoca.inquiries@k12.dc.gov. The offeror shall submit **questions** no later than **2:00pm EST Wednesday, June 23, 2021**. The District will not consider any questions received after the specified date of June 23, 2021, by 2:00pm EST. The District will furnish responses via an amendment published on the DCPS website, https://dcps.dc.gov. An amendment to the solicitation will be issued if the CO decides that information is necessary in submitting offers, or if the lack of it would be prejudicial to any prospective offeror. The amendment will be posted on DCPS website on Tuesday, June 29, 2021, by 2:00pm EST. Oral explanations or instructions given by District officials before the award of the contract will not be binding.

L.6.2 ERROR IN PROPOSAL

Offerors are fully responsible to read and understand all information and requirements contained in the solicitation. Failure to do so will be at the offerors' risk. In event of a discrepancy between the unit price and the total, the unit price shall govern.

L.7 RESTRICTION ON DISCLOSURE AND USE OF DATA:

L.7.1 Offerors who include in their proposal data that they do not want disclosed to the public or used by the District except for use in the procurement process shall mark the title page with the following legend:

"This proposal includes data that shall not be disclosed outside the District and shall not be duplicated, used or disclosed in whole or in part for any purpose except for use in the procurement process."

L.7.2 If, however, a contract is awarded to this offeror because of or in connection with the submission of this data, the District will have the right to duplicate, use, or disclose the data to the extent consistent with the District's needs in the procurement process. This restriction does not limit the District's rights to use, without restriction, information contained in this proposal if it is obtained from another source. The data subject to this restriction are contained in sheets (insert page numbers or other identification of sheets)."

L.7.3 Mark each sheet of data it wishes to restrict with the following legend:

"Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal."

L.8 PROPOSALS WITH OPTION YEARS

L.8.1 The offeror **shall** include option year prices in its price/cost proposal. An offer may be determined unacceptable if it fails to include pricing for the option year(s).

L.8.2 The offeror must offer on all Contract Line Item Numbers (CLINs) to be considered for this award. Failure to offer on all CLINs may render the proposal non-responsive and disqualify an offer.

L.9 PROPOSAL PROTESTS

Any actual or prospective offeror or contractor who is aggrieved about the solicitation or award of a contract, must file with the D.C. Contract Appeals Board (Board) a protest no later than ten (10) business days after the basis of protest is known or should have been known, whichever is earlier. A protest based on alleged improprieties in a solicitation which are apparent at the time set for receipt of initial proposals shall be filed with the Board prior to the time set for receipt of initial proposals. In procurements in which proposals are requested, alleged improprieties which do not exist in the initial solicitation, but which are subsequently incorporated into the solicitation, must be protested no later than the next closing time for receipt of proposals following the incorporation. The protest shall be filed in writing, with the Contract Appeals Board, 441 4th Street, N.W., Suite 350N, Washington, D.C. 20001. The aggrieved person shall also mail a copy of the protest to the CO for the solicitation.

L.10 UNNECESSARILY ELABORATE PROPOSALS:

L.10.1 Unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete and effective response to this solicitation are not desired and may be construed as an indication of the offeror's lack of cost consciousness. Elaborate artwork, expensive visual and other presentation aids are neither necessary nor desired, unless requested.

L.11 RETENTION OF PROPOSALS:

L.11.1 All proposal documents will be the property of the District and retained by the District, and therefore will not be returned to the offerors.

L.12 PROPOSAL COSTS:

L.12.1 The District is not liable for any costs incurred by the offerors in submitting proposals in response to this solicitation.

L.13 CERTIFICATES OF INSURANCE:

L.13.1 Prior to commencing work, the Contractor shall have its insurance broker or insurance company submit certificates of insurance giving evidence of the required coverages as specified in Section I.8 to:

Candace Butler
Chief Procurement Officer
District of Columbia Public Schools
Office of Contracts and Acquisitions
1200 1st Street, NE -- 9th Floor
Washington, DC 20002
O: 202-442-5112
E-Mail: candace.butler@k12.dc.gov

L.14 ACKNOWLEDGMENT OF AMENDMENTS:

L.14.1 The offeror shall acknowledge receipt of any amendment to this solicitation via signed copies of the amendments submitted with the proposals. The District must receive the acknowledgment by the date and time specified for receipt of proposals. An offeror's failure to acknowledge an amendment may result in rejection of its offer.

L.15 BEST AND FINAL OFFERS:

L.15.1 If, subsequent to receiving original proposals, negotiations are conducted under 27 DCMR § 1632.1(c), all offerors within the competitive range will be so notified and will be provided an opportunity to submit written best and final offers at a designated date and time. Best and final offers will be subject to the Late Submissions, Late Modifications and Late Withdrawals of Proposals provisions of the solicitation. After evaluation of best and final offers, the CO may award the contract to the highest-ranked offeror or negotiate with the highest ranked offeror in accordance with 27 DCMR § 1634.

L.16 LEGAL STATUS OF OFFEROR:

Each proposal must provide the following information:

L.16.1 Name, address, telephone number and federal tax identification number of offeror;

L.16.2 A copy of each District of Columbia license, registration or certification that the offeror is required by law to obtain. If the offeror is a corporation or partnership and does not provide a copy of its license, registration or certification to transact business in the District of Columbia, the offer shall certify its intent to obtain the necessary license, registration or certification prior to contract award or its exemption from such requirements; and

L.16.3 If the offeror is a partnership or joint venture, the names and addresses of the general partners or individual members of the joint venture, and copies of any joint venture or teaming agreements.

L.17 FAMILIARIZATION WITH TERMS AND CONDITIONS

Offerors shall thoroughly familiarize themselves with the terms and conditions of this solicitation, acquainting themselves with all available information regarding difficulties which may be encountered, and the conditions under which the work is to be accomplished. Contractors will not be relieved from assuming all responsibility for properly estimating the difficulties and the cost of performing the services required herein due to their failure to investigate the conditions or to become acquainted with all information, schedules and liability concerning the services to be performed.

L.18 GENERAL STANDARDS OF RESPONSIBILITY

L.18.1 The prospective contractor must demonstrate to the satisfaction of the District its capability in all respects to perform fully the contract requirements; therefore, the prospective contractor must submit relevant documentation within five (5) days of the request by the District.

L.18.2 To be determined responsible, a prospective contractor must demonstrate that it:

a) Has adequate financial resources, or the ability to obtain such resources, required to perform the contract;
b) Is able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;
c) Has a satisfactory performance record;
d) Has a satisfactory record of integrity and business ethics;
e) Has a satisfactory record of compliance with the applicable District licensing and tax laws and regulations;
f) Has a satisfactory record of compliance with labor and civil rights laws and rules, and the First Source Employment Agreement Act of 1984, as amended, D.C. Official Code §2-219.01 *et seq*.;
g) Has, or has the ability to obtain, the necessary organization, experience, accounting, and operational control, and technical skills;
h) Has, or has the ability to obtain, the necessary production, construction, technical equipment, and facilities;
i) Has not exhibited a pattern of overcharging the District;
j) Does not have an outstanding debt with the District or the federal government in a delinquent status; and
k) Is otherwise qualified and is eligible to receive an award under applicable laws and regulations.

L.18.3 If the prospective contractor fails to supply the information requested, the CO shall make the determination of responsibility or non-responsibility based upon available information. If the available information is insufficient to decide of responsibility, the CO shall determine the prospective contractor to be non-responsible.

L.18.4 In order to determine the fiscal viability of the prime contractor or any subcontractor (if applicable), the DCPS reserves the right to conduct a financial determination to determine the Contractor's financial responsibility pursuant to L.18.2(a). The Contractor under consideration for award may be required to provide one or more of the following financial documents:

a. Balance Sheet;
b. Income Statement;

c. Cash Flow Statement;
d. Bank Letter of Creditor
e. An audited Financial Statement

Documents submitted will be kept confidential and used only for the determination of fiscal viability by the DCPS.

L.19 PRE-PROPOSAL CONFERENCE

L.19.1 There will **not** be a "Pre-Proposal Conference.

SECTION M: EVALUATION FACTORS

M.1 EVALUATION FOR AWARD

The contract will be awarded to the responsible offeror whose offer is most advantageous to the District, based upon the evaluation criteria specified below. Thus, while the points in the evaluation criteria indicate their relative importance, the total scores will not necessarily be determinative of the award. Rather the total scores will guide the District in making an intelligent award decision based upon the evaluation criteria.

M.2 TECHNICAL RATING

M.2.1 The Technical Rating Scale is as follows:

Numeric Rating	**Adjective**	**Description**
0	Unacceptable	Fails to meet minimum requirements, e.g., no demonstrated capacity, major deficiencies which are not correctable; offeror did not address the factor.
1	Poor	Marginally meets minimum requirements; major deficiencies which may be correctable.
2	Minimally Acceptable	Marginally meets minimum requirements; minor deficiencies which may be correctable.
3	Acceptable	Meets requirements; no deficiencies.
4	Good	Meets requirements and exceeds some requirements; no deficiencies.
5	Excellent	Exceeds most, if not all requirements; no deficiencies.

M.2.2 The technical rating is a weighting mechanism that will be applied to the point value for each evaluation factor to determine the offeror's score for each factor. The offeror's total technical score will be determined by adding the offeror's score in each evaluation factor. For example, if an evaluation factor has a point value range of zero (0) to forty (40) points, using the Technical Rating Scale above, if the District evaluates the offeror's response as "Good," then the score for that evaluation factor is 4/5 of 40 or 32.

M.2.3 If subfactors are applied, the offeror's total technical score will be determined by adding the offeror's score for each subfactor. For example, if an evaluation factor has a point value range of zero (0) to forty (40) points, with two subfactors of twenty (20) points each, using the Technical Rating Scale above, if DCPS evaluates the offeror's response as "Good" for the first subfactor and "Poor" for the second subfactor, then the total score for that evaluation factor is 4/5 of 20 or 16 for the first subfactor plus 1/5 of 20 or 4 for the second subfactor, for a total of 20 for the entire factor.

M.3 EVALUATION CRITERIA

Each of the following evaluation factors and sub factors, listed below, will be used by DCPS in evaluating the services proposed by the contractor in response to this solicitation. The Contractor shall respond to each factor and significant sub factors in a way that will allow DCPS to evaluate the

Contractor's response. The scoring for each evaluation factor will be based on DCPS's determination of the degree to which the contractor satisfies the requirements of the evaluation factor and significant sub-factors.

Proposals will be evaluated based on the following evaluation factors in the manner described below:

M.3.1 TECHNICAL CRITERIA (60 Points Maximum)

Description: These factors consider the Contractor's past performance, experience and ability to serve DCPS's needs as described in Section C. These factors include an examination of the quality of services provided, timeliness in service delivery, business practices, and overall satisfaction with the Contractor(s)'s performance.

SECTION	Technical Evaluation Factor	Points
	Factor A: Background and Past Performance	**25**
C.9.5	**Sub Factor 1**: Breadth of Food Service Industry Operation (time, size & scope) The purpose of this sub factor is to determine the Contractor's experience with school nutrition food service accounts and volume of sales. The Contractor will be evaluated based on its recent proven experience (duration of at least five years) on performing contracts of similar complexity and value.	**5**
B.7	**Sub Factor 2**: Fulfillment of Required Items The purpose of this subfactor is to assess the Contractor's ability to satisfy all of the products as listed in Attachment J.12 of this solicitation. The Contractor will be evaluated on its confirmation that the quantity of products listed in Attachment J.12 will be readily available for use as a stocked item.	**15**
C.9.5	**Subfactor 3**: References from existing customers of superior services. At least five letters from five customers. The purpose of this sub factor is to assess the overall performance satisfaction of the Contractor by existing customers The Offeror will be evaluated on the content of the reference documentation as provided.	**5**

	Factor B: Procurement & Reporting	**35**
C.9.1-C.9.7	**Sub Factor 1**: Understanding of, and Compliance with, the Buy American Provision The purpose of this sub factor is to evaluate compliance with the Buy American Provision The Contractor will be evaluated on its ability to demonstrate its practices that comply with the Buy American Provision	**10**
C.5.7	**Sub Factor 2**: Records of Safety The purpose of this sub factor is to evaluate the ability to comply with DCPS's requirement for food safety. The Contractor will be evaluated on its records of safety inspections for a period of 18 months.	**15**
C.9.1.7	**Sub Factor 3**: Procurement reporting The purpose of this sub factor is to evaluate the Offeror's ability to comply with DCPS's reporting requirements listed in C.9.1.7. The Contractor shall be evaluated on a sample report that is easy to read. The sample report shall include all the criteria listed in Section C.9.1.7.	**10**
	TOTAL	**60**

M.3.2 PRICE CRITERION (40 Points Maximum)

The price evaluation will be objective. The offeror with the lowest price will receive the maximum price points. All other proposals will receive a proportionately lower total score. The following formula will be used to determine each offeror's evaluated price score:

Lowest price proposal
---------- x weight = Evaluated price score
Price of proposal being evaluated

M.3.3 PREFERENCE POINTS AWARDED PURSUANT TO SECTION M.5.2 (12 Points Maximum)

M.3.4 TOTAL POINTS (112 Points Maximum)
Total points shall be the cumulative total of the offeror's technical criteria points, price criterion points and preference points, if any.

M.4 EVALUATION OF OPTION YEARS

The District will evaluate offers for award purposes by evaluating the total price for all options as well as the base year. Evaluation of options shall not obligate the District to exercise them. The total District requirements may change during the option years. Quantities to be awarded will be determined at the time each option is exercised.

M.5. PREFERENCES FOR CERTIFIED BUSINESS ENTERPRISES

Under the provisions of the "Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005", as amended, D.C. Official Code § 2-218.01 *et seq.* (the Act), the District shall apply preferences in evaluating proposals from businesses that are small, local, disadvantaged, resident-owned, longtime resident, veteran-owned, local manufacturing, or local with a principal office located in an enterprise zone of the District of Columbia.

M.5.1 Application of Preferences

For evaluation purposes, the allowable preferences under the Act for this procurement shall be applicable to prime contractors as follows:

M.5.1.1 Any prime contractor that is a small business enterprise (SBE) certified by the Department of Small and Local Business Development (DSLBD) will receive the addition of three points on a 100-point scale added to the overall score for proposals submitted by the SBE in response to this Request for Proposals (RFP).

M.5.1.2 Any prime contractor that is a resident-owned business (ROB) certified by DSLBD will receive the addition of five points on a 100-point scale added to the overall score for proposals submitted by the ROB in response to this RFP.

M.5.1.3 Any prime contractor that is a longtime resident business (LRB) certified by DSLBD will receive the addition of five points on a 100-point scale added to the overall score for proposals submitted by the LRB in response to this RFP.

M.5.1.4 Any prime contractor that is a local business enterprise (LBE) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score for proposals submitted by the LBE in response to this RFP.

M.5.1.5 Any prime contractor that is a local business enterprise with its principal offices located in an enterprise zone (DZE) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score for proposals submitted by the DZE in response to this RFP.

M.5.1.6 Any prime contractor that is a disadvantaged business enterprise (DBE) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score for proposals submitted by the DBE in response to this RFP.

M.5.1.7 Any prime contractor that is a veteran-owned business (VOB) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score for proposals submitted by the VOB in response to this RFP.

M.5.1.8 Any prime contractor that is a local manufacturing business enterprise (LMBE) certified by DSLBD will receive the addition of two points on a 100-point scale added to the overall score for proposals submitted by the LMBE in response to this RFP.

M.5.2 Maximum Preference Awarded
Notwithstanding the availability of the preceding preferences, the maximum total preference to which a certified business enterprise is entitled under the Act is the equivalent of twelve (12) points on a 100-point scale for proposals submitted in response to this RFP. There will be no preference awarded for subcontracting by the prime contractor with certified business enterprises.

M.5.3 Preferences for Certified Joint Ventures
When DSLBD certifies a joint venture, the certified joint venture will receive preferences as a prime contractor for categories in which the joint venture and the certified joint venture partner are certified, subject to the maximum preference limitation set forth in the preceding paragraph.

M.5.4 Verification of Offeror's Certification as a Certified Business Enterprise

M.5.4.1 Any vendor seeking to receive preferences on this solicitation must be certified at the time of submission of its proposal. The contracting officer will verify the offeror's certification with DSLBD, and the offeror should not submit with its proposal any documentation regarding its certification as a certified business enterprise.

M.5.4.2 Any vendor seeking certification or provisional certification to receive preferences under this solicitation should contact the:

Department of Small and Local Business Development
ATTN: CBE Certification Program
441 Fourth Street, NW, Suite 970N
Washington DC 20001

M.5.4.3 All vendors are encouraged to contact DSLBD at (202) 727-3900 if additional information is required on certification procedures and requirements.

M.6 EVALUATION OF PROMPT PAYMENT DISCOUNT

M.6.1 Prompt payment discounts shall not be considered in the evaluation of offers. However, any discount offered will form a part of the award and will be taken by the District if payment is made within the discount period specified by the offeror.

M.6.2 Regarding any discount offered, time will be computed from the date of delivery of the supplies to carrier when delivery and acceptance are at point of origin, or from date of delivery at destination when delivery, installation and acceptance are at that, or from the date correct invoice or voucher is received in the office specified by the District, if the latter date is later than date of delivery. Payment is deemed to be made for the purpose of earning the discount on the date of mailing of the District check.

************END OF THE DOCUMENT************