



# INVITATION TO BID

**BID NO.**

**FS385-1920/61**

**Long Beach Unified School District (LBUSD)  
Nutrition Services Branch  
3333 E. Airport Way, Long Beach, California 90806**

Date Issued: January 3, 2020

**Closing Date** February 4, 2020  
**Closing Time:** 10:00 a.m.

Advertisement Date: January 3, 2020

All bid inquires must be submitted in writing via email to [nsbpurchasing@lbschools.net](mailto:nsbpurchasing@lbschools.net) no later than January 21, 2020. Questions and Answers will be made public on the LBUSD Nutrition Services Branch website under "Vendor Bids", bid number FS385-1920/61 addendum, no later than end of business day January 23, 2020.

Sealed bids will be received in the office of the Nutrition Services Director, Long Beach Unified School District (LBUSD), 3333 E. Airport Way, Long Beach, California 90806, **until 10:00 a.m.** on the "Closing Date" written above, at which time they will be publicly opened and declared for furnishing:

PURCHASE OF DRY GOODS  
(March 5, 2020 through June 30, 2020)  
**PLEASE USE ENCLOSED ENVELOPE WHEN RETURNING BID**

**BIDDER'S SURETY IS:**

- NOT REQUIRED FOR THIS BID.
- REQUIRED in the amount of \_\_\_\_\_ and shall be enclosed with the Bid Proposal.

**QUALIFICATIONS:** To qualify for consideration, each Bid must be:

1. Returned complete and intact on standard bid forms, using the standard envelopes provided for this purpose.
2. Physically received no later than the hour and closing date prescribed above.
3. Signed manually by an authorized bidder or company representative. (ORIGINAL ONLY)
4. Returned with signed Suspension and Debarment, Suspension and Other Responsibility Matters form, page 26, Certification Regarding Lobbying form and Disclosure of Lobbying Activities form, page 29-30, and Buy American Provision Exception Request Exhibit A.

**INVALIDATION:** Failure to comply with the above requirements shall constitute grounds for invalidating the bid, which may be rejected and declared void by LBUSD.

## PROPOSAL

### TO THE BOARD OF EDUCATION OF THE LONG BEACH UNIFIED SCHOOL DISTRICT

Honorable Members:

In compliance with the invitation to bid, the undersigned, acting for the firm named, hereby proposes and agrees, if this bid be accepted, to furnish the items and/or services at the prices quoted opposite each item, within the times indicated, and in accordance with the instructions, general conditions, and specifications set forth in these bid documents.

<p>--- Please read these instructions, the general conditions* and the specifications carefully before submitting your bid.</p> <p>--- Quote Net Delivered prices only.</p> <p>--- Do not include State Sales tax. Show Federal tax, if any, separately.</p> <p>--- For further information, call (562) 427-7923 x274 and ask for <u>Elizabeth Cortez</u> Purchasing Agent or e-mail: <a href="mailto:ecortez@lbschools.net">ecortez@lbschools.net</a></p>	<p>FIRM NAME _____</p> <p>By _____  <div style="display: flex; justify-content: space-between; width: 80%; margin-left: 20px;"> <span>Print or Type Name</span> <span>MANUAL SIGNATURE</span> </div> </p> <p>Address _____  <div style="display: flex; justify-content: space-between; width: 80%; margin-left: 20px;"> <span>Number</span> <span>Street</span> </div> </p> <p>Address _____  <div style="display: flex; justify-content: space-between; width: 80%; margin-left: 20px;"> <span>City</span> <span>State</span> <span>ZIP</span> </div> </p> <p>Phone _____ FAX _____ Dated _____</p> <p>E-mail: _____</p> <p>FEDERAL TAX ID #: _____ DUNS #: _____</p>
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\*General Conditions (over)

## GENERAL CONDITIONS OF THE BID

1. The detailed requirements of the specifications shall supersede any conflicting provisions of these General Provisions.
2. Hereinafter, the word "District" means the Board of Education or its authorized representative.
3. **PROMPT PAYMENT TERMS** will not influence the award of Bid Orders (except in case of ties).
4. a. **BIDDER'S SURETY:** when required by the invitation to bid, shall be in the form of a good and sufficient bid bond, or cashier's check, drawn on a solvent bank in favor of the Long Beach Unified School District, or cash deposit. If the bidder fails, within ten (10) days after notice of award of contract, to enter into or execute a contract, file a performance bond, or otherwise neglect to comply with the provisions of this bid, the District may retain the bidder's surety as liquidated damages to reimburse the District for expenses in the amount equal to the additional burden and expense, if any, arising from said failure.  
b. **FAITHFUL PERFORMANCE BOND:** The successful bidder, hereinafter called "contractor," shall furnish, when required to do so by the provisions of the bid, a good and sufficient bond in a sum as stated in the invitation to bid, as a guarantee that the contractor shall faithfully perform in accordance with all terms and conditions of the contract.
5. **BID PREPARATION AND SUBMISSION:**
  - a. Bids received later than the time and date specified in the Invitation to Bid will not be considered.
  - b. All prices and other notations must be typewritten or written in ink. Changes or corrections must be initialed by the person signing the bid.
  - c. Bidders must bid separately upon each item, showing unit price and extension. In case of error in computation, the unit price shall prevail.
  - d. Bidder shall quote lowest net price, best delivery date, maximum discount terms for prompt payment and make and model of the item offered.
  - e. **BRAND NAMES:** Where brand names and models of their "equal" are identified, such reference is not intended to be restrictive but is for the sole purpose of indicating to prospective bidders a description of the articles required. Bids on alternate or substitute items will be considered, provided the bid clearly describes the substitutes offered, and they are equal to the specified item in quality, utility and performance. A sample thereof shall be submitted only when requested to do so. The sample shall be furnished free of cost to the District. It is understood and agreed that the bidder is bidding upon the identical item specified, unless he states specifically in the space provided, the brand or model he offers as the equal of the one specified.
  - f. On items to be awarded as a "LOT", all bidders are required to bid on each item listed in the lot. The District reserves the right, however, to accept or reject one or more items in the Lot and to accept partial bids.
  - g. **WITHDRAWAL OR CHANGE OF BID:** Bids may be withdrawn only by letter or in person prior to the stated closing time. No change or corrections or withdrawal of bids will be permitted thereafter without written authorization by the District.
  - h. **TRADE-INS & ALTERNATE BID:** The District may offer to purchase certain items conditioned on the agreement of the bidder to purchase designated equipment and remove same from the District Warehouse and stating in the bid the amount that may be deducted from the bid price for furnishing the new material, as provided in Paragraphs 39523 and 81454 of the Education Code. Condition of the equipment to be turned in to be "as is". Equipment may be inspected if desired. Bidder may either offer an exchange allowance or an alternate quotation on the same item without trade-in.
  - i. Unless otherwise stated, bid specifications call for equipment and supplies that are new and unused, or current manufacture.
6. **AWARDS & RESERVATIONS:**
  - a. The District reserves the right to:
    - 1) Reject any and all bids or any part of any bid.
    - 2) Accept any part of the bids at prices quoted, to the best advantage of the District, unless bidder positively limits his bid to "all or none".
    - 3) Waive any informality or irregularity in any bid.
  - b. Bids are subject to acceptance within sixty (60) days of closing date, and bids shall remain irrevocably in effect for 60 days after bid closing date.
  - c. A written purchase order mailed, or otherwise furnished, to the contractor results in a binding contract without further action by either party.
7. **DELIVERY/F.O.B.:** All articles, unless otherwise specified, must be delivered, ready for use, F.O.B. Long Beach Unified School District Nutrition Services Warehouse, 3333 Airport Way, in quantities and within the time specified by the purchase order. No equipment shall be accepted knocked-down; all equipment shall be assembled prior to (or within three days after) delivery; and no charges for the transportation, handling, containers, packing, etc., will be allowed unless otherwise specified in the quotation. All articles shall be subject to inspection and acceptance or rejection by the District.
8. **DEFAULT BY CONTRACTOR:** The District shall hold the contractor responsible for any damage which may be sustained because of the failure or neglect of the contractor to comply with any term or condition listed herein or in the purchase order, it being specifically provided and agreed that time shall be the essence of the contract delivery requirements.  
If the contractor fails or neglects to furnish or deliver any of the materials, supplies or services listed herein at the prices named and at the time and places herein stated or otherwise fails or neglects to comply with the specifications and other terms of the contract, the District may, upon written notice to the contractor, cancel the contract in its entirety or cancel or rescind any or all items affected by such default, and may, whether or not the contract is cancelled in whole or in part, purchase the materials, supplies or services elsewhere without notice to the contractor. The prices paid by the District at the time such purchases are made shall be considered the prevailing market prices. Any extra cost incurred by such default may be collected by the District from the contractor and the surety on the performance bond, if any.
9. **ASSIGNMENT:** No contract awarded under this proposal shall be assigned except with the District's written approval.
10. **SAFETY AND LEGAL REQUIREMENTS:**
  - a. All materials, equipment or supplies referred to in the bid shall be in full compliance with the safety orders and regulations of the Division of Industrial Safety of the State of California, the minimum standards of O.S.H.A. and all other laws and ordinances applicable thereto.
  - b. All electrical, radio and electronic equipment, materials, supplies and accessories called for in the specifications must bear the seal of approval of the Underwriters Lab., Inc., and/or the Electrical Testing Laboratories of the City of Los Angeles. Where seals of approval are not visibly identifiable, a signed statement of such approval shall be furnished to the District, if so requested.
  - c. Motor-driven or shock-hazard machinery and appliances must have a 3-wire cord (grounded) and 3-prong plug. If the item is "double insulated" and so certified by U.L., grounding is not necessary.
11. **PAYMENT:**
  - a. Payment will be made only to the firm name written on the quotation and will not be made on partial shipments unless authorized in writing by the Nutrition Services Director.
  - b. All cash discount (prompt payment terms) shall be taken and computed from the date of acceptance of material or the date of receipt of the invoice, whichever is later.
12. **WARRANTY:** Period shall begin on the date that the article is placed in service by the user. Each bidder shall state in writing the warranty on parts, labor and travel costs, when applicable.
13. **PERMITS AND LICENSES:** The contractor and all of his employees or agents shall secure and maintain in force such licenses and permits as are required by law, in connection with the furnishing of materials, articles or services herein listed.
14. **CONTRACT DOCUMENTS:** The complete purchase agreement includes but not limited to the following documents: The advertisement for bids (when required), the bid and purchase order conditions, the specifications and drawings, the bid of the supplier and its acceptance by the District, the purchase order, performance guarantee, and all amendments thereto. Any of these documents shall be interpreted to include all provisions of the other documents as though fully set out therein.
15. **FORCE MAJEURE CLAUSE:** The parties to the contract shall be excused from performance there under during the time to the extent that they are prevented from obtaining, delivering or performing by act of God, fire, strike, loss or shortage of transportation facilities, lockout, or commandeering of materials, products, plants of facilities by the government, when satisfactory evidence thereof is presented to the other party, provided that it is established that the non-performance is not due to the fault or neglect of the party not performing.

16. **COLLUSION STATEMENT:**

The above signed hereby certifies that this bid is genuine and not sham or collusive or made in the interest or behalf of any person not herein named, and that the above signed has not directly or indirectly induced or solicited any other Bidder to put in sham bid or any other person, firm, or corporation to refrain from bidding, and the above signed has not in any manner sought by collusion to secure for himself an advantage over any other Bidder.

17. **ASSIGNMENT BY BIDDER:**

Assignment by Bidder to purchasing body rights under federal law arising from purchase pursuant to bid:

In submitting a bid to public purchasing body, the Bidder offers and agrees that if the bid is accepted it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 commencing with Section 16700) or part of Division 7 of the Business Professions Code arising from purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the Bidder.

The preceding provisions of this section shall be included in full in any specification for the public purchase and shall be included in full in the bid agreement or general provisions incorporated into the bid agreement.

18. **COPIES OF BID:**

Due to the cost of materials and distribution, the Long Beach Unified School District, Nutrition Services Branch, hereinafter referred to as the "District", in most cases, is mailing one original bid from which is to be completed and returned as your proposal. **PLEASE RETURN THE ORIGINAL BID.** NO COPIES PLEASE.

19. **AFFIRMATIVE ACTION/EQUAL EMPLOYMENT OPPORTUNITY EMPLOYER:**

The Long Beach Unified School District is an Affirmative Action/Equal Employment Opportunity Employer, and in accordance with applicable state and federal law does not discriminate in any employment practice on the basis of age (40 and over), ancestry, color, marital status, medical condition, national origin, political or union affiliation, physical or mental disability, race, religion, sexual orientation, or sex. This policy of affording equal employment opportunities to all persons is in keeping with provisions of

Title VII and Title IX amendments of the United State Code which protect persons against discrimination.

**20. FAIR EMPLOYMENT PRACTICES:**

In the performance of this Contract, the Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, sex, age, disability, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, ancestry, sex, age, condition of disability, national origin or other prohibited reason. Such action shall include, but not limited to, the following: employment, promotion, demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of the Fair Employment Practices Section.

The Contractor will permit access to their records of employment, employment advertisements, application forms, and other pertinent information and records by the Affirmative Action/Title IX Programs Section for the purposes of investigation to ascertain compliance with the Fair Employment Practices Section of the Contract.

**21. PREPARATION OF BID:**

Before submitting a bid, the Bidder shall thoroughly familiarize themselves with all Terms and Conditions of the Contract Bid Form, and any addenda issued before the Bid Closing. Such addenda shall form a part of the Bid and shall be made a part of the Contract Documents. It shall be the Bidder's responsibility to ascertain that their bid includes all addenda issued prior to the Bid Closing. Bidder should review carefully, information provided, to insure that they are thoroughly familiar with all the requirements, conditions and cost implications that will exist if a contract is awarded to them.

The Bidder must satisfy themselves by personal examination and by such other means as they may prefer as to the actual conditions and requirements under which the service must be performed. If under inspection and examination by the Bidder there are any existing conditions or requirements of the service which are not completely understood by the Bidder, they shall contact the Nutrition Services Branch at the telephone number and/or email address listed on the cover page for such information that the District representative may have.

Bidders are expected to examine the specifications and all instructions of the bid. Failure to do so will be at the Bidder's risk. Each Bidder shall furnish the information required by this bid. The Bidder shall print or type his/her name on the bid and each continuation

sheet on which he/she makes any entry. Erasures and other changes must be initialed by the person signing the bid. **VENDOR TO COMPLETE AND SUBMIT PAGE 26, CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS PAGES 29-30, LOBBYING ACTIVITIES WITH THIS BID**

22. **APPROPRIATION OF FUNDS:**

In the event funds for any specific item are not appropriated, the District reserves the right not to purchase any or all of the total quantities shown in this bid. Any order issued as a result of this solicitation is contingent upon the availability of appropriated funds. If funds do not become available or withdrawn, the District reserves the right to cancel any order. The District will make every attempt to purchase as indicated to the best of its ability.

23. **SCOPE OF CONTRACT:**

The Long Beach Unified School District, desires to purchase dry goods as specified and establish a price agreement for future purchases for the period of the contract, in accordance with all the terms, conditions, and specifications specified herein.

24. **BASIS OF AWARD:**

The award(s) shall be made to the lowest responsive and responsible bidders providing the “lowest cost per serving” or bid/offer most advantageous to the program with price and other factors considered, provided the minimum weight is met and the product and service are acceptable. The unit cost submitted must be as unit requested (i.e. case, portion, dozen, etc.). The District will make conversions and computations if necessary. Unit cost bid should include any delivery charge (F.O.B. Destination).

25. **METHOD OF AWARD:**

This is a request for firm prices for dry goods required for use by the Nutrition Services Branch. Please submit quotations on items to be furnished on the attached sheets in accordance with all conditions and specifications. **BIDDER MUST SPECIFY PACKAGE WEIGHT AND CASE COUNT, MANUFACTURER NAME AND CODE NUMBER, AND BRAND NAME AND CODE NUMBER.**

It is the intent of the District to award contract(s) “Individually,” “As a Whole,” or “In Any Combination,” whichever would be in the best interest of the District. Award is contingent upon timely compliance with all Bid Conditions and Specifications which must be satisfied prior to beginning of service under the Contract.

As a result of the bid, the Contract(s) will be awarded according to the authority granted the Board of Education of Long Beach Unified School District under California Law (e.g. the Public Contract Code, Education Code, and Government Code).

**\*AWARDS ARE NOT BASED SOLELY ON THE LOWEST COST BID. In addition to the lowest cost, the Bidder must be capable of compliance with all other Specifications and Bid Conditions required by the District as indicated in this bid to be eligible for an award.**

The District reserves the right to reject any and all bids or any part of any bid. The District also reserves the right to accept any part of the bid at prices quoted, cancel individual items or lots, remove items from a lot, and award to the lowest responsive and responsible Bidder or bid/offer most advantageous to the program with price and other factors considered.

In the event a Bidder is successful on one item only amounting to less than two thousand dollars (\$2,000.00), the District, if mutually agreeable to the low Bidder, will make the award to another Bidder with multiple items awarded.

Qualifications of bid with a requirement by Bidder for any minimum order other than as specified in this bid may be cause for rejection of Bidder's entire bid.

**26. CONTRACT TERM/PRICING:**

The term of this contract shall be as specified on page one. If mutually agreed, the start date of the contract to begin immediately after notification of award. Prices shall remain firm for this period. No fuel surcharges will be accepted. The District intends to award to the lowest responsive and responsible bidders or bid/offer most advantageous to the program with price and other factors considered.

If mutually agreeable, the District reserves the right to consider the extension of this contract for a one year (1 yr.) period. Time of such extension to begin the day after the end of the initial term of this contract and will end a full one (1) year period thereafter. In addition, the District reserves the right to further extend this contract to the extent allowed by law. Factors that would influence the District in exercising this option would be satisfactory measurement of local market conditions, satisfactory service being rendered by contract holder, and the amount of any increase in price and other appropriate factors.

Bid prices that are subject to increase for each period shall be based upon percentage increase or decrease in the annual Consumer Price Index (C.P.I.) for all urban consumers for the Los Angeles-Long Beach-Anaheim, CA area.

The adjustments to the contract rate (prices) schedule, if any, shall be evaluated by using the percentage of change between February of the previous year and February of the current year's Consumer Price Index published by the U.S. Department of Labor's Bureau of Labor Statistics. The specific index to be reviewed is the C.P.I. for Los Angeles-Long Beach-Anaheim, California – All Items Less Shelter.

All requests for rate adjustments must be requested by the Contractor in writing no later than sixty (60) days prior to the end of each annual contract period. An explanation citing the rationale for price increase must be included in such correspondence.

It is expressly understood that rate increases are not automatic nor guaranteed. Contractors' request to increase the current rate schedule will be evaluated and considered when such adjustments are requested. Requests for rate increases should not exceed the current February CPI. The District reserves the right to reject any such request and re-bid and/or cancel said contract within the provisions of the existing agreement. All increases are subject to negotiation between the Contractor and the District.

The following is an example of an actual Consumer Price Index showing how the annual change is calculated.

Consumer Price Index Pacific Cities and U.S. Average

Index For All Urban Consumers

Los Angeles-Long Beach-Anaheim, California

All Items Less Shelter

(2019-18 = 100)

February, 2019 index = 231.196

February, 2018 index = 229.387

12-month index change = 1.809

Percentage change, February, 2018 to

February, 2019 = 0.7886%\*\* 1.809/229.387

\*\*Percentage basis to be used when evaluating any request for rate adjustments. For information on the Consumer Price Index, contact the Bureau of Labor Statistics at (202) 691-5200 or visit [www.bls.gov/cpi/](http://www.bls.gov/cpi/)

Bid prices that are subject to adjustments shall be calculated to four decimal places. And the adjusted price rounded even to four significant digits. They are not to be rounded up or down.

As an illustration, the decimal quantity 12.345 can be expressed with various numbers of significant digits or decimal places. The following table shows the results for various

total precisions and decimal places rounded to the nearest value using the round-to-even method.

<b>Precision</b>	<b>Rounded to significant digits</b>	<b>Rounded to decimal places</b>
Five	\$12.345	\$12.34500
Four	\$12.34	\$12.3450
Three	\$12.3	\$12.345
Two	\$12	\$12.34

The adjusted bid price for the contract renewal, when considered, will have a total of four precisions rounded to four significant digits using the round-to-even method. As in the example above, the adjusted bid price shall be \$12.34

**27. QUALIFIED BIDS:**

The District hereby notifies all Bidders that they are advised not to restrict their bids to minimum shipment (either quantity or dollar amount) on any item on this bid. The District adheres to federal, state and local procurement laws and guidelines including CFR 2 section 200.319. The District will accept bids from manufactures, brokers, and distributors.

**28. VENDOR SELECTION:**

The Long Beach Unified School District specifically reserves the right to evaluate, in its absolute discretion, the total bid of each Bidder so as to select the company which will best serve the needs of the District, thus ensuring that the best interest of the District and its tax paying public will be served.

The Long Beach Unified School District reserves the right to inspect the facilities of the Bidder prior to award of contract, and, if the District determines, after such inspection, that the Bidder is not capable of performance satisfactory to the District, the bid will not be considered.

**29. BIDDER'S PAST PERFORMANCE:**

A Bidder may be ruled "Non-Responsive"/"Non-Responsible" based upon Bidder's unacceptable past performance which may include but not limited to: late deliveries, partial deliveries, delivery of wrong materials, products not meeting specifications, providing incorrect prices, invoicing problems, default, etc.



30. **QUOTATION INFORMATION:**

The following "Rate Schedule" shall be firm during the contract period.

Bidder shall fill out the attached quotation information and indicate (1) the Manufacturer's brand name; (2) Manufacturer's product code number; and (3) Unit Price for the items requested/bidding.

The "Unit Price" bid should include prices for all items listed in the Specifications Section. Vendor shall list price of products - F.O.B. Long Beach.

Specific product brand names and numbers specified by the District in the product specifications are indicated to clarify specification only. Manufacturer's name and product code must be listed for any brand being offered. Bids offering "a/s" or "as specified" may not be considered. Items considered equal to or superior to the specification may be quoted and submitted.

Any remark, additions, amendments, or exceptions attached (by the Bidder) to the bid, which conflicts with terms and conditions herein, may cause it to be deemed "non-responsive."

Bid on each item separately for accounting purposes. Items may be awarded either "individually," "as a whole," or "any combination."

When filling in the Quotation Information the Bidder should either type or print legibly in ink. If the information/unit price is illegible, that item may not be considered for an award. **Bids submitted in pencil or erasable ink will be rejected.**

31. **UNIT PRICING:**

Prices must be shown for all items and will remain firm for the entire term of the contract. Vendor shall list price of products - F.O.B. Long Beach.

Bid on each item separately for accounting purposes. Items on this bid will be awarded individually and/or by lot item basis as specified in the bid.

32. **POINTS-BASED INCENTIVE PROGRAMS:**

Any points-based incentive programs or the like, submitted by a bidder as part of their bid, will not be considered in the bid evaluation criteria. However, if offered during the course of the contract agreement, the District may consider the incentive program if it is deemed to benefit the District. Incentives are defined as points and/or gifts earned on purchases.

33. **PRICE GUARANTEE:**

Prices are *maximums* for the period of the contract. In the event of a price decline, or should you sell the same materials under similar quantity and delivery conditions to the State of California, or any County, Municipality or Legal District of the State of California at prices below those bid herein, such lower prices are to be immediately extended to the Long Beach Unified School District.

34. **ESTIMATED DISTRICT REQUIREMENTS:**

The quantities listed in the bid are annual estimates only based on previous usage and are not a guarantee of actual quantities to be purchased. The District reserves the right to purchase additional quantities for any item listed herein to meet the needs of the District.

The District reserves the right to purchase items that are urgently needed by the District from other than the Contractor such items that are not readily available from the Contractor.

The Nutrition Services Branch reserves the right to accept USDA Donated Commodities to the School Nutrition Program by any agency of Federal, State, or Local government, during the term of this contract, notwithstanding any other conditions contained herein. Such offering may affect the quantities purchased. The District reserves the right to purchase less or more or none of the quantities for any item listed herein.

35. **DELIVERY REQUIREMENTS AND LOCATION:**

Time is hereby declared to be of the essence in this contract. Time and manner of delivery are essential factors in proper performance under the contract.

Vendor must notify the District at least two (2) days prior to delivery of an order of any changes to the order.

Products are to be delivered to the Long Beach Unified School District, Nutrition Services Branch, 3333 E. Airport Way, Long Beach, CA 90806, as ordered by the Nutrition Services Branch. All deliveries are to be made between the hours of 7:00 A. M. and 2:00 P.M., Monday through Friday, except for scheduled District holidays. A District calendar is available upon request. All items delivered must be in a condition acceptable to the District. Any dented, damaged or unlabeled containers will be rejected and returned at supplier's expense. Any repacked products are not acceptable. A vendor's delivery record will be seriously considered in the awarding of future bids.

The Contractor shall be responsible for delivery **F.O.B. Long Beach Unified School District – Nutrition Services Branch Warehouse** and shall pay all costs, including drayage, freight, pallets, and packaging, which shall be included in the item unit cost. No

separate charges for the preceding will be allowed nor paid by the District and must include a detailed delivery/packing slip. All delivery and freight charges are to be included in the bid price.

**ALL DELIVERIES MUST BE PALLETIZED WITH A MAXIMUM HEIGHT NOT TO EXCEED 61", BUT IF DOUBLE-STACKED, NO HIGHER THAN 85" INCLUDING PALLET HEIGHT AND PALLETS MUST BE FORWARD FACING. FAILURE TO COMPLY WITH THESE REQUIREMENTS SHALL BE CAUSE FOR REJECTION OF DELIVERY AND RETURNED TO VENDOR AT VENDOR'S EXPENSE.**

Pallets must be **GMA (Grocery Manufacturer Association) standard, Premium Grade B or better**. Any deliveries that are using **Grade B or C** pallet will be rejected and returned to vendor at vendor's expense. Delivery shall be made on standard stringer pallets, 40" x 48", 4-Way, flush, as specified below, in accordance with a given option:

Option 1: Delivery made on pallets which will become the property of the District and which meet the following specifications:

Pallets: 40"W x 48"L hardwood lumber.

Three (3) stringers to be 1-1/2" x 3-1/2" x 48" long. Only one of the three stringers having added a plug or other type of repair.

Deck boards - 6 to 7 boards on top, 3-1/2" to 5-1/2" wide. No less than 4 boards on bottom. Average top deck spacing 2-1/2" to 4"

Stringers have two (2) cut-outs 10" length by 1-1/2" high, 6" from the end of each stringer. The deck boards and stringers to be fastened with 2-1/2" drive nails and three (3) per each bearing point and to be machine nailed in a staggered line to lend strength and prevent splitting. Nails are to be countersunk so that the head of each nail is below the surface of the deck boards, rendering them unable to damage material to be loaded on the pallet.

Option 2: Delivery made on pallets meeting the above specification, which will be exchanged for the District's pallets at time of delivery.

Option 3: Delivery made on pallets not meeting the above specification (Option 1). At the District's discretion, delivery may be rejected and returned to vendor a vendors' expense or the vendor or his consignor shall unload pallets onto pallets furnished by the District. All charges shall be indicated in the unit price.

**NOTE:** ALL COSTS FOR PALLETIZING SHALL BE INCLUDED IN UNIT PRICE. FAILURE TO COMPLY WITH THE REQUIREMENTS LISTED ABOVE MAY BE CAUSE FOR REJECTION OF DELIVERY AND PRODUCTS SHALL BE RETURNED TO VENDOR AT VENDOR'S EXPENSE.

**36. ORDERS:**

Orders will be placed by FAX, email, or via vendor's online ordering system by the school site cafeteria supervisor or the Nutrition Services Branch for merchandise as required. Confirmation of receipt of order will be requested. Receipt of award notice by the successful Bidder(s) shall NOT be interpreted as an order. Merchandise shall only be shipped as requested. Automatic deliveries will not be accepted.

The District has the right to order at the price, term, and conditions in effect at any time prior to the expiration date of the agreement.

**The Vendor to allow the District at least two (2) business days prior to delivery of an order, to make any modifications or cancellation of an order.**

A vendor's delivery record will be seriously considered in the awarding of future bids.

**37. ONLINE FOOD ORDERING SYSTEM:**

In an effort to expedite orders and maintain accuracy, the District is interested in an online food ordering system through a web page or computer application program.

Bidder is encouraged to include information regarding their online food ordering system with their bid packet if available.

**38. BRAND, PRODUCT CODE NUMBER, & PACK SIZE:**

Bidders are to indicate in the space provided on the bid sheets the brand name and product code number of each product and pack size if different than specified. Once brands, product code number, and pack sizes have been established in a contract as submitted in this bid, the successful vendor is expected to maintain those brands, product code numbers, and pack sizes. Any changes must be approved by the District's Nutrition Services Director before acceptance of substitutes or alternates.

**39. PRODUCT SUBSTITUTION/MANUFACTURER'S BRAND CHANGE/ REFORMULATION OF PRODUCTS:**

**This contract does NOT allow for substitutions, brand change, or reformulation of any product without written authorization by an Authorized District**

**Representative.** If during the course of the contract there is a manufacturer's brand change or reformulation of the product, the Contractor/Manufacturer representative shall not automatically substitute product. Contractor must submit notification of any changes made to the product to the District by e-mail at [nsbpurchasing@lbschools.net](mailto:nsbpurchasing@lbschools.net). Contractor shall submit product specification sheet, Product Formulation Statement, Nutrition Facts, and/or sample upon request for approval consideration prior to any future shipment.

If the new/reformulated product is acceptable, all current terms, conditions, and prices shall remain in effect. Unauthorized substitutions or reformulated product delivered without prior written approval by the District may be returned to Contractor at Contractor's expense. Payment will not be processed for unauthorized substitutions or reformulation.

Substitutions or reformulated product is subject to the Buy American Provision and the Choose California Produce Act.

40. **ALTERNATE PRODUCTS:**

The District encourages bids of alternative equivalent products. However, Bidders will be asked to demonstrate equivalency of alternates to the products specified. To that end, the District requires that Bidders submitting bids other than specified include detailed literature and specification sheets with their bid. Failure to include such information may be cause for rejection of the alternate items. The District specifically reserves the right to evaluate, in its absolute discretion, the total bid of each Bidder so as to select the company which will best serve the needs of the District, thus insuring that the best interest of the District and its tax paying public will be served.

The specifications set forth in this bid are intended to be used as a basis for determining acceptable quality and performance. The specifications are not meant to be restrictive to a particular brand. The District does reserve the right to be the sole determiner of equivalent products and reserves the right to waive any minor variations from specifications and to evaluate the bid based on the determination of what is in the District's best interest. The District also reserves the right to reject any part of the bid or the whole bid.

41. **OTHER PURCHASES:**

The District reserves the right to acquire from other sources during the life of the contract such like items, as may be required for testing, evaluation, experiment, for special programs of an emergency nature, or whenever the successful Bidder cannot supply, per conditions of paragraph 15.

**42. PRODUCT SPECIFICATIONS:**

The specifications outlined herein represent the minimum acceptable quality for products requested. A CN Label (when applicable), Product Specification Sheet, Product Formulation Statement (PFS), Nutrition Fact Sheet with ingredient list and product serving information, certification letter identifying the state and the country of origin and a copy of the case label must be provided for each item submitted in the bid including the specified brand and code number.

Product Specification Sheet must include the product name, code number, a CN Label (when applicable) or PFS, manufacturer, signature of a company representative, and a date.

PFS must have the information necessary to confirm manufacturer's statement regarding product's component contribution toward the reimbursable meal. It must include product name, product code number, serving size, type and weight of creditable ingredient using the Food Buying Guide, printed name, signature, and title of the company representative certifying that the information on the PFS is true and correct, and date signed.

**43. SCHOOL NUTRITION PROGRAM REQUIREMENTS:**

When information regarding the School Nutrition Program is requested in the following specifications, refer to the Food Buying Guide for School Meal Programs by FNS of USDA to determine the meal requirements and equivalents met by each food item. For current information and updates, visit USDA Food Buying Guide for School Meal Programs at: <http://www.fns.usda.gov/tn/food-buying-guide-school-meal-programs>

**44. NUTRITION POLICY:**

It is the policy of the Nutrition Services Branch that all processed foods have only the minimum of sodium, fat, sugar, and/or additives that are absolutely necessary for food preservation, safety, and palatability.

It is the goal of the Nutrition Services Branch to minimize all artificial colors and flavors from food products and to reduce sodium and saturated fat in processed foods. It is preferred that polyunsaturated and monounsaturated fat be used in processing.

Food products and ingredients must contain zero grams of trans fat (<0.5 g per serving).

To comply with the USDA requirements of the Meal Pattern and Nutrition Standards for the National School Lunch and School Breakfast Programs, the Nutrition Services Branch intends to provide nutrient-dense meals (high in nutrients and low in calories) by increasing the availability of fruits, vegetables, whole grains, and fat-free and low-fat

fluid milk in school meals; reduce the levels of sodium and saturated fat in meals; and meet the nutrition needs of school children within their calorie requirements.

In order to meet the USDA whole grain requirement, only whole grain rich products will be offered, unless otherwise specified in the item specification. Whole grain rich products must contain a minimum 50% whole grain and the remaining grain if any, must be a creditable grain, as identified in the Food Buying Guide.

The Nutrition Services Branch encourages manufacturers to minimize the use of artificial flavor and color additives, and/or chemical preservatives in the processing and preparation of products. The Nutrition Services Branch also encourages manufacturers to develop foods that are lower in sodium content. The USDA Nutrition Standards for the National School Lunch and School Breakfast Program requirement for sodium level is for schools to gradually reduce the sodium content by approximately 25% to 50% from the 2012 sodium levels.

**The sodium content of the products submitted in this bid will be evaluated and taken into consideration and may affect the final award.**

Manufacturers are also encouraged to provide a product with the lowest possible fat and sodium content while still providing a product with good flavor and texture. It is anticipated that some products may not be incorporated into student lunch menus if doing so would cause the menu to exceed values for recommended fat and sodium content.

45. **NUTRIENT CONTENT:**

The Nutrition Service Branch utilizes a computer software program to analyze the nutrient content of student meals.

Manufacturers, distributors, and importers are expected to comply and remain current with legal requirements for food labeling, including Nutrition Facts, by Food and Drug Administration (FDA) and are responsible for assuring validity of a product label's stated nutrient values. The Contractor will therefore be required to provide product specification sheet, Product Formulation Statement (PFS) with accurate nutrient information and/or (Child Nutrition) CN label. The nutritional information must be certified by the R&D Director to be true and correct.

The following information will be required from the manufacturer: ingredient list, serving size, weight (g), calories (kcal), trans fat (g), carbohydrate (g), protein (g), total fat (g), saturated fat (g), cholesterol (mg), sodium (mg), iron (mg), calcium (mg), vitamin A (I.U.), vitamin C (mg), vitamin D (I.U.), fiber (g), potassium (mg), sugar (g), thiamin (g), riboflavin (mg), niacin (mg), vitamin B6 (mg), and folic acid (mcg).

**46. PACKAGING/SHELF LIFE:**

Packages shall be so constructed as to insure safe transportation to point of delivery. Packaging should minimize breakage and maintain freshness. **CASES SHOULD BE CLEAN. SOILED AND DAMAGED CASES WILL NOT BE ACCEPTED.** Only new cartons shall be used for packaging. No previously used cartons shall be used for packaging.

Unless otherwise stated within the specification of each individual item, shelf life to be within reasonable standards for all items and may be designated upon purchase of specific items if necessary. "Closed Dating" is a code that consists of a series of letters and/or numbers applied by manufacturers to identify the date and time of production. If 'Closed Dating' is used, then key must be made available prior to the first delivery. The District prefers the use by date to be on the case and not printed on the individually wrapped product. Clear wrap packaging is preferred. No selling prices are to appear on any item delivered.

All packaging materials are subject to the approval of the Nutrition Services Branch. All cases must be new.

**47. INSPECTION OF BIDDER'S FACILITY:**

The District reserves the right to inspect the facilities of the Bidder prior to the award of contract and if representatives of the District determine after such inspection that the Bidder is not capable of performance satisfactory to the District, the bid will not be considered. In addition to physical characteristics to determine capacity, the proposed facility should employ at minimum, industry standards of good manufacturing practices. If a Bidder is located out of town/state and/or products bid are manufactured out of town/state, the Bidder shall bear the transportation costs and accommodations of not more than three (3) District representatives, if any inspection of the facility is necessary, as determined by the District. Should the Contractor vacate approved facility, a re-inspection will be required under the same conditions for the new facility.

**48. STORAGE FACILITY SANITATION REQUIREMENTS:**

The District has pest control procedures in place at all of its storage facilities for food items and related products. In order not to compromise these procedures, any product delivered under this contract must have an audit trail that clearly demonstrates appropriate handling and storage practices. This will include providing proof of established sanitation procedures and an active pest control program to assure proper sanitary condition exist.

Additionally, should the Contractor change physical locations in which the product to be provided to the District is manufactured and/or stored, the Contractor shall notify the



District prior to such move. The plant facilities of the successful Bidder shall be accessible at all times of normal operation to inspection by a representative of the District.

All products shall be produced and handled in accordance with applicable sanitary practices. Manufacturing and processing plants shall meet the standards of sanitation as determined by the Los Angeles County Health Department, State of California, USDA and FDA as applicable.

**49. HANDLING/STORAGE:**

All products must conform to the provisions set forth in the Federal, State, City and County laws for their production, handling, processing, marketing, and labeling.

The plant and facilities of the successful Bidder shall be accessible at all times of normal operation to inspection by representatives of the District.

The District reserves the right to inspect the facilities of the Bidder prior to award of the Contract and if representatives of the District determine after such inspection that the Bidder is not capable of performance satisfactory to the District, their bid will not be considered.

It is also the District's responsibility to monitor a vendor's compliance to health and safety laws. Therefore, we may require an inspection of the manufacturing plant on a quarterly basis. Should this be necessary, this will be performed at the expense of the vendor awarded the bid.

**50. METAL DETECTOR:**

All products must be examined for the presence of metal by a detection device approved by the Food Safety and Inspection Service (FSIS). The metal detector must be capable of detecting metallic contaminants including, but not limited to, stainless steel shavings, pieces of metal from processing equipment, metal fragments from cutting knives, metal staples, and packing fasteners. The metal detection system used must have the sensitivity to detect a 1.5 mm, 440 stainless steel test standard before final packaging and a 3 mm, 440 stainless steel test standard after final packaging.

The District reserves the right to request documentation from the Contractor at any point during the contract period to ensure the requirement is being met.

51. **FDA FOOD SAFETY MODERNIZATION ACT (FSMA) FINAL RULE FOR PREVENTATIVE CONTROLS FOR HUMAN FOOD:**

The owner, operator, or agent in charge of a food facility that is required to register with FDA under section 415 of the FD&C Act, shall evaluate the hazards that could affect food manufactured, processed, packed, or held by such facility, identify and implement preventive controls to significantly minimize or prevent the occurrence of such hazards and provide assurances that such food is not adulterated or misbranded, monitor the performance of those controls, and maintain records of this monitoring as a matter of routine practice.

For information regarding (FSMA) Final Rule for Preventive Controls for Human Food visit: <http://www.fda.gov/Food/GuidanceRegulation/FSMA>

52. **SAMPLES:**

Samples, CN Label (when applicable), Nutrition Analysis Sheet, Product Specification Sheet and Product Formulation Statement may be requested before award is made. Each item shall be properly identified as to vendor, bid number, and line item number and must be provided within five (5) working days from date of request.

Failure to provide samples, CN Label, and nutrient and specification sheets as requested may be cause for rejection of bid. Samples shall be provided at no cost to the District.

Samples shall be a representative of the exact item to be provided during the contract period. This includes but not limited to flavor, shape, color, size, packaging, case count, and ingredients.

Bidder must submit samples to:

Long Beach Unified School District – Nutrition Services Branch  
Attn: Nutrition Services Purchasing Agent  
3333 E. Airport Way  
Long Beach, CA 90806  
Tel.: (562) 427-7923

The manufacturer/brand, product code, pack code identification, and the ingredients identified on each sample must be consistent with the labels on the products when purchased. Products furnished under this contract, which fail to maintain their standard of quality, will be immediately removed/rescinded from this contract.

All products must conform to the United States Department of Agriculture standards and the provisions set forth in the Federal, State, County, and City laws for their production.

**53. PRODUCT TESTING:**

If in the opinion of the District, an item purchased on this bid does not conform to specifications or perform to the standards of the previous samples submitted, the District reserves the right to have the product tested by an independent testing laboratory. If the test shows that the product does not conform to specifications or meet the standards of the samples submitted, the cost of testing will be charged to the vendor and the contract may be cancelled. Items purchased that do not conform to specifications will be returned to seller at seller's expense. Seller shall issue full credit for all items returned.

**54. THE BUY AMERICAN PROVISION:**

Section 104(d) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 requires that schools and institutions participating in the School Nutrition Programs in the contiguous United States to purchase, to the maximum extent practicable, domestic commodities or products for the use in meals served under the programs.

The legislation defines "domestic commodity or product" as one that is produced in the United States and is processed in the United States, substantially using agricultural commodities that are produced in the United States as defined in 7 CFR 210.21(d). Substantially means over 51 percent of the final processed product (by weight or volume) must consist of agricultural commodities that were grown domestically. Thus, for foods that are unprocessed, agricultural commodities must be domestic, and for foods that are processed, they must be processed domestically using domestic agricultural components that are comprised of over 51% domestically grown items, by weight or volume.

For products procured by the District for use in the Child Nutrition Program using nonprofit food service account funds, the product's food component is considered the agricultural commodity. Food component is defined as one of the food groups which comprises reimbursable meals. The food components are: meats/meat alternates, grains, vegetables, fruits, and fluid milk. Please refer to USDA 7 CFR 210.2 for full definitions.

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

- (1) The product is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality; or
- (2) Competitive bids reveal the costs of the domestic commodity or product are significantly higher than the nondomestic commodity or product.

Documentation of non-domestic food exceptions

To be considered for an alternative or exception, the request must be submitted in writing with the bid submission (see Exhibit A for suggested format). This request must include:

- (1) Alternative substitute(s) that are domestic and meet the required specifications:
  - (a) Price of the domestic food alternative substitute(s); and
  - (b) Availability of the domestic alternative substitute(s) in relation to the quantity ordered.
  
- (2) Reason for exception: limited/lack of availability or price (include price):
  - (a) Price of domestic food product; and
  - (b) Price of non-domestic product that meets the required specification of the domestic product.

Further information regarding exceptions and the Buy American memo, SP 38-2017, can be found at:

<https://www.fns.usda.gov/school-meals/compliance-enforcement-buy-american>.

**55. COMPLIANCE WITH THE BUY AMERICAN PROVISION:**

To ensure compliance with the Buy American provision, the District requires that bidders submit a certification of domestic origin for all the components of the products submitted with their bid. And if available, bidder to submit a copy of the case label that identifies the state and the country of origin.

The District may deem a bid as “unresponsive” and ineligible for contract award if certification and/or case label are not included with their bid. Furthermore, should the bidder be awarded a contract, contractor will be required to identify the country of origin for each item listed on the contractor’s packing list/bill of lading and on contractor’s invoice. Noncompliance with the terms and conditions of the contract award and with the Buy American provision may result in contract cancellation.

**56. CHOOSE CALIFORNIA PRODUCE ACT:**

In compliance with Chapter 7 Part 1 of Division 21 of the Food and Agricultural Code, where price, fitness, and quality being equal, the District will give preference to supplies and produce - that is grown, manufactured or produced in the state of California.

The District requires all bidders to provide information of where the supplies and produce is grown, manufactured or produced for each item submitted on the bid. The District may deem a bid as “unresponsive” and ineligible for contract award for failure to include this information with their bid.

Information on Assembly Bill No. 822 regarding Choose California Produce Act can be found at:

[http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180 AB822](http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180 AB822)

**57. INVOICE PAYMENT TERMS:**

Contractors will deliver one copy of invoice with the goods and mail one copy promptly to the Long Beach Unified School District.

It is preferred that all invoices are to be transmitted electronically to [nsbcafeap@lbschools.net](mailto:nsbcafeap@lbschools.net) or mailed to:

Long Beach Unified School District, Attn: Cafeteria Accounting  
3333 E. Airport Way, Long Beach, California 90806.

Invoices are to be pre-printed with vendor name and distinctly numbered on a uniformed invoice form. Items, item description, product code numbers, quantities, unit cost, extended amount, contract number and the District purchase order number, as used, must be shown on each invoice. All invoices must be numbered with a distinct number.

The District desires to pay vendors within a 30-day period. Terms less than 30 days will not be considered unless an appropriate discount is available for early payment. Terms less than 30 days will automatically be interpreted as net 30. Vendor is encouraged to offer discount for prompt payment. However, the award of this bid will be determined on the lowest responsive and responsible bidders or bid/offer most advantageous to the program with price and other factors considered, regardless of terms offered.

**58. DISCONTINUANCE OF SERVICE:**

The District reserves the right to discontinue service of all or any portion of this contract for any reason determined by the School District to be detrimental to the health and welfare of students and school personnel and to hold the Contractor in default.

Additionally, products furnished under this contract, which fail to maintain their standard of quality, will be immediately removed from this contract and the Contractor may be required to supply an acceptable product at no increase in cost to the District.

**59. CONTRACT CANCELLATION PROVISION:**

All Terms and Conditions including pricing are firm for the duration of this contract. This agreement may be cancelled by the District upon thirty (30) days written notification of intention to cancel the agreement.

Upon notification, the District has the right to order at the price, term, and conditions in effect at any time prior to the effective date of the cancellation of the agreement and required delivery of the items so ordered.

**60. PIGGYBACKABLE BID CLAUSE:**

For the term of the contract and any mutually agreed extensions, pursuant to Section 20118 of the Public Contract Code, other public entities in the counties of Los Angeles, Orange, Riverside and San Bernardino California may purchase identical items directly from vendor at the same unit prices subject to the same terms and conditions of this bid document to acquire the items awarded herein. The District waives its' right to require other public entities / subsequent piggyback users to draw their warrants in favor of the district or make notification of the use of this bid, and authorizes each public entity to make payment directly to the successful Bidder. Products and services offered within this contract may be accepted or rejected, all or in part, at the sole discretion of the CONTRACTOR upon subsequent use(s) of the agreement. Acceptance or rejection of this condition will not affect the outcome of this proposal.

**61. ERRORS IN BIDS/RELIEF OF BID:**

Bidders or their authorized representatives are expected to fully inform themselves as to the conditions, requirements, and specifications before submitting bids. Failure to do so will be at the Bidder's own risk and he/she cannot secure relief on the plea of error. In case of error in extension of the prices in the bid, the unit price shall govern at the discretion of the Director of the Nutrition Services Branch.

**62. APPLICABILITY:**

These terms and conditions are incorporated as requirements for all items listed in the bid form, in addition to the individual specified description for each separate item.

## DEBARMENT AND SUSPENSION

A school food authority is prohibited from contracting with a company or individual that has been debarred or suspended in accordance with 7 CFR Part 3017. This prohibition does not extend to contracts in existence at the time of the debarment/suspension or to most contracts under \$100,000. Rather, it applies to new contracts and extensions or renewals of existing contracts of \$100,000 or more and to contracts for audit services, regardless of amount. This prohibition does not apply to proposed debarments.

### Debarment Procedures:

- Upon receipt of information concerning the existence of a cause for debarment, FNS must investigate and determine whether debarment is the appropriate course of action. If so, FNS issues a notice of proposed debarment to the company or individual, explaining the cause for the action and the procedures for opposing the proposed debarment.
- A notice of proposed debarment does not excuse a company or individual from fulfilling existing contracts involving Federal non-procurement programs. Furthermore, a company or individual may continue to enter into new contracts or extend or renew existing contracts involving Federal non-procurement programs during this period of time.
- Within 30 days after receipt of the notice of proposed debarment, the company or individual may submit information in opposition to the proposed debarment. Should FNS determine that debarment is appropriate, the company or individual is debarred for a period of time which reflects the seriousness of the cause, generally not to exceed 3 years.
- During the period of debarment, the company or individual is excluded from any transactions involving Federal non-procurement programs, including the extension or renewal of existing contracts. However, a debarred company or individual is not excused from fulfilling a contract that involves a Federal non-procurement program and that it is in existence at the time of the debarment. For example, a company or individual which is debarred by FNS and which is under contract to supply milk to a school food authority receiving funds under the National School Lunch Program may continue to do business under that contract, but no extension or renewal of that contract is permitted.

### Compliance Agreement:

- The existence of a cause for debarment does not necessarily require that a company or individual be debarred, if FNS determines that the company or individual is currently conducting business in a responsible manner and does not pose a threat to the Child Nutrition Programs, the public interest, and the Federal government. In such cases, FNS may consider an alternative course of action, such as a Compliance Agreement.
- Under such an agreement, a company could be required to institute ethics education programs for its employees, report to FNS on its bidding practices, and even restructure management in order to prevent any future misconduct. Such an agreement would allow the company to continue to participate in transactions involving Federal non-procurement programs, while providing the guarantees necessary to assure FNS that the Federal government and the public are protected.

## Suspension Procedures:

- FNS may consider a suspension action if FNS receives information concerning the existence or likelihood of a cause for debarment and if immediate action is necessary to protect the public interest. If suspension is deemed to be the appropriate course of action, FNS issues a notice of suspension to the company or individual explaining the cause for the action and the procedures for opposing the suspension.
- A suspension immediately excludes the company or individual from transactions involving Federal non-procurement programs pending completion of legal and/or debarment proceedings. A suspension may be opposed by the company or individual in essentially the same procedural manner as a proposed debarment and cannot extend beyond 18 months unless administrative or legal proceedings have been initiated within that period.
- As with a debarment, the company or individual is not excused from fulfilling contracts involving Federal non-procurement programs. And while the company or individual and a school food authority may continue to do business under an existing contract, the contract may neither be extended nor renewed, nor may the school food authority enter into a new contract with a suspended company or individual.

## Certification Statement:

- To ensure that a school food authority does not enter into a contract with a debarred or suspended company or individual, each school food authority must require that each responsive bidder include a certification statement with each bid on each contract. By signing the certification statement, the bidder certifies that neither it nor any of its principals (e.g., key employees) have been proposed for debarment, debarred, or suspended by a Federal agency. It is the responsibility of each bidder to sign the certification statement and submit it with any bid.
- A school food authority may rely upon the certification statement submitted by a bidder unless school food authority personnel know that the certification is in error. In such cases, the school food authority should contact the State agency for confirmation of the bidder's status relative to debarment and suspension.



## INSTRUCTIONS FOR CERTIFICATION

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

**Debarment, Suspension, and Other Responsibility Matters**

As required by Executive Order 12549, Debarment and Suspension, for participants or respondents in primary covered transactions:

- A. The participant or respondent certifies that it and its principals:
- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
  - (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
  - (d) Have not within a three-year period preceding this application had one or more public transactions (federal, state, or local) terminated for cause or default.
- B. Where the participant or respondent is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

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Participant or Respondent Company Name FS385-1920/61 Award Number, Contract Number, or Project Name

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Name(s) and Title(s) of Authorized Representatives

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Signature(s)

Date

## CERTIFICATION AND DISCLOSURE STATEMENTS

Following is an explanation of Submittal requirements of the *Suspension and Debarment Certification Statement and the Certification Regarding Lobbying* by School Food Authorities (SFA) and Food Service Management/Consulting Companies.

Beginning with the 1998/99 school year, instructions to comply with procurement requirements by completion of these certifications will be included in the annual renewal of School Nutrition Programs.

**The applicability of this information begins with the 1998/99 school year and is for SFAs that meet one of the following criteria:**

- The SFA's estimated annual federal child nutrition reimbursement will exceed \$100,000.
- The SFA's annual contract with a vendor exceeds \$100,000.
- The SFA utilizes a Food Service Management or Consulting Company and the annual contract exceeds \$100,000.

### **Suspension and Debarment Certification**

This certification is required to be completed by the contractor each time an SFA renews or extends an existing contract that exceeds \$100,000. The certification is also required when an SFA puts out bids for goods and services that will exceed \$100,000. In these instances, the SFA must obtain a completed *Suspension and Debarment Certification* from either the potential vendor or existing contractor before any transactions can occur between the sponsor and the vendor or contractor (7CFR 3017.110). This certification is required as a part of the original bid, contract renewal, or contract extension to assure the SFA that the vendor or any of its key employees have not been proposed for debarment, debarred, or suspended by a Federal agency. While this certification is required for all contracts in excess of \$100,000, it is recommended that they be routinely requested under all procurements. The completed certification is to be attached to the signed contract and maintained on file by the SFA. **Do not submit the certification to the California Department of Education.**

### **Certification Regarding Lobbying**

SFA's that receive in excess of \$100,000 in annual federal meal reimbursement **must** annually complete and submit this certification statement to the California Department of Education (CDE), Child Nutrition and Food Distribution Division (CNFFD). The statement is part of the annual renewal of the SFA's agreement with the California Department of Education, Child Nutrition and Food Distribution Division. In addition, when SFA's put out bids for goods and services or renew/extend existing contracts that exceed the \$100,000 threshold, they are required to obtain a completed *Certification Regarding Lobbying* from either the potential vendors and/or existing contractors before any transactions can occur between the SFA and the vendor or contractor (7CFR 3018.110). This certification is required as part of the original bid, contract renewal, or contract extension.

Also enclosed is the **Disclosure of Lobbying Activities** form. If the potential or existing contractor responds positively to item 2 of the *Certification Regarding Lobbying* statement, also submit the enclosed **Disclosure of Lobbying Activities** form.

## **Applicable to Both Certification Statements**

- Federal law prohibits SFAs from circumventing the \$100,000 threshold by entering into multiple contracts; each of which do not equal or exceed \$100,000, but the aggregate amount of all the contracts will equal or exceed \$100,000.
- Vendors must submit completed certifications to the SFA as part of the original bid, contract renewal, or contract extension. If completed certifications are not included, the original bid is considered non-responsive, and the contract renewal or extension is incomplete. In order for the SFA to consider the original bid or renew/extend the original contract, the vendors must have submitted current certifications to the SFA.

## **SFAs with Food Service Management or Consulting Contracts**

SFAs utilizing food service management or consulting companies **must** include both certification statements in all Requests for Proposals (RFP) and new contracts, as well as contract amendments/renewals submitted to the CDE, CNFDD, for approval. The food service management or consulting company must annually sign and submit to the SFA both the *Suspension and Debarment Certification* and the *Certification Regarding Lobbying*. The SFA is required to sign only the Certification Regarding Lobbying

### Summary

- ***Suspension and Debarment Certification***
  1. The SFA must include this certification in all RFPs that result in an annual contract in excess of \$100,000.
  2. A contractor is required to sign this certification when a contract or renewal contract with an SFA exceeds \$100,000 annually in federal funds.
  3. The SFA retains certification signed by contractor with executed contract and maintains it on file.
- ***Certification Regarding Lobbying***
  1. The SFAs receiving in excess of \$100,000 in annual federal reimbursement must sign and submit this certification during the annual renewal of the School Nutrition Programs participation.
  2. SFAs must obtain this completed certification from any potential or existing contractor as part of any original contract or contract renewal/extension that exceeds the annual expenditure of \$100,000 in federal funds.
  3. The **Disclosure of Lobbying Activities** form may need to be completed if any payment has been made or will be made to any person or lobbying entity. (Item 2 of **Certification Regarding Lobbying**.)

If you have any questions regarding these requirements, please contact your School Nutrition Program analyst at the toll free number (800) 952-5609.

**CERTIFICATION REGARDING LOBBYING**

**CERTIFICATION FOR CONTRACTS, GRANTS, AND COOPERATIVE AGREEMENTS**

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

1. No Federal appropriated-funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of congress, or an employee of a member of congress in connection with the awarding of any federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any Funds other than Federal-appropriated funds have been paid or will be paid to any person for influencing or attempting to influence any officer or employee of an agency, a member of congress, an officer or employee of congress, or an employee of a member of congress in connection with this Federal contract, grant, loan, or a cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

By \_\_\_\_\_  
Signature Authorized Agency Representative Date

By \_\_\_\_\_  
Print Name & Title Authorized Agency Representative

For \_\_\_\_\_  
Name of Company (Title)



## INSTRUCTIONS FOR COMPLETION OF SF - LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF -LLL -A Continuation Sheet for additional information if the space on the form is inadequate. Complete all sections that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and the quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g. the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in No. 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (No.1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in No. 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the awards/loan commitment for the prime entity identified in No. 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in No. 4 to influence the covered Federal action.  
(b) Enter the full names of the individual(s) performing services, and include full address if different from No. 10(a). Enter the Last Name, First Name and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (No. 4) to the lobbying entity (No. 10).
12. Check the appropriate box (es). Check all boxes that apply. If other, specify nature.
13. Check the appropriate box (es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.