

SECTION 1A

**MISSISSIPPI DEPARTMENT OF EDUCATION
OFFICE OF CHILD NUTRITION**

INVITATION FOR BID

Food, Supplies, and Distribution

Commodity or Equipment

Bid File No. **18-2150-P801**

February 22, 2018

Date Invitation Mailed

Bid Opening Time: **10:00am**

April 11, 2018

Bid Opening Date

**Office of Child Nutrition
500 Greymont Ave. Suite F
Jackson, Mississippi**

Bid Opening Place

The undersigned offers and agrees that should this bid be accepted they will sell and deliver to the school districts and other qualified entities, in compliance with the conditions set forth in this document, the food and/or supplies specified in this invitation. The person signing this document shall be an employee of the bidding company and shall have the authority to obligate the company to comply with the terms set forth herein.

RETURN **ORIGINAL, SIGNED** BID TO:

Mississippi Department of Education

Office of Child Nutrition

Post Office Box 771, Jackson, MS 39205-0771 (**USPS Mailing Address**)

500 Greymont Ave. Suite F, Jackson, MS 39202 (**Physical Location**)

Bidder's Firm Name _____ Address _____

City _____ State _____ ZIP _____ Telephone _____ - _____

AUTHORIZED SIGNATURE: _____

Contract Administrator:

Name _____ Title _____

Firm _____ Address _____

City _____ State _____ ZIP _____ Telephone _____ - _____

SUBMIT WITH BID PACKAGE

SECTION 1B

**MISSISSIPPI DEPARTMENT of EDUCATION
OFFICE OF CHILD NUTRITION
STATEWIDE PURCHASING PROGRAM**

**Certification Regarding Debarment, Suspension, Ineligibility
and Voluntary Exclusion**

Non-federal entities are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, and 2 CFR part 180. These regulations restrict awards, sub-awards, and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

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

- 1) is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi;
- 2) has not, within a three period preceding this proposal, been convicted of or had a civil judgement rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing public (federal, state or local) transaction or contract under a public transaction;
- 3) has not, within a three period preceding this proposal, been convicted of or had a civil judgement rendered against it for a violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- 4) is not presently indicted for or otherwise criminally charged by a governmental entity (federal, state, or local) with a commission of any of these offenses enumerated in paragraphs two (2) and three (3) of this certification; and,
- 5) has not within a three year period preceding this proposal, had one or more public transactions (federal, state, or local) terminated for cause or default.

Organization Name

Bid File Number

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

Signature(s)

Date

SUBMIT WITH BID PACKAGE

SECTION 2: GENERAL INSTRUCTIONS

2.1 Sealed bids must be received by the Mississippi Department of Education (MDE) no later than **10:00 a.m. Wednesday, April 11, 2018, in the Office of Child Nutrition, 500 Greymont Ave. Building, Suite F, Jackson, Mississippi.** (See Submission of Bid 2.11 [b].) Bids delivered after that time will not be considered and shall become the property of the MDE. The MDE reserves the right to reject any or all bids. All bids received by the MDE shall become the property of the MDE.

2.2 Compliance:

Failure to meet the requirements of the specifications in any area will cause the bid to be non-responsive and the bid shall be rejected.

2.3 General Conditions:

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

2.4 Bidder Responsibility:

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

2.5 Questions for Clarification:

Written questions concerning the bid shall be submitted to Bill Urban at burban@mdek12.org. Questions for Mr. Urban must be submitted no later than Wednesday, March 14, 2018, at 5:00 p.m. Answers will be transmitted via email to all bidders no later than 3 working days from receipt of questions. Copies of all questions submitted, and responses will be posted to MDE's website at www.mdek12.org under Public Notices.

2.6 Corrections:

All edits or corrections must be made in the Mississippi Automated Food Purchasing System (MAPS) prior to submission. Electronically submitted bids in the MAPS system are final. **Corrections will not be allowed after bids have been electronically submitted.**

2.7 Manufacturer Direct Pricing:

All items designated herein as "Direct to Manufacturer" or Group "A" (See Product Designation Section 5.5), are priced through a contract established between MDE and a manufacturer. The successful distributor will purchase these items from the designated manufacturer and will be

reimbursed on the basis of the price set by the MDE Manufacturer contract. The distributor shall purchase the exact item from the designated manufacturer. To deviate in either case shall be cause for cancellation of the distributor contract and the cancellation shall be governed by Section 2.24.

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

2.8 Bid Pricing:

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

2.9 Brand Identification:

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

2.10 Liability:

Subsequent to the awarding of a contract the contractor will be liable for any expense, including legal fees, incurred by MDE, any school district, or any other qualified entity as a result of violations of the contract terms by any contractor (See Section 3.1.8 Default).

2.11 Submission of Bid:

Bids shall be submitted in compliance with the following criteria:

Bids must be submitted both electronically and on paper.

- a. On-line bidding will be completed as instructed on the attached bid instructions. **The user name and password (unique to each bidder) are included in the attached bid cover letter. At the initial log-in the bidder will be prompted to change the password to one of their choice. Please make note of the user name and password and keep them so they can be used throughout the bid process.**
- b. The following completed and signed sections must be placed in the "PINK" envelope:
 1. Section 1A Invitation for Bids
 2. Section 1B Debarment Certification
 3. Bid Summary pages generated in the MAPS system
 4. Section 7 USDA Commodities Bid Sheet printed from provided CDThe company name, bid opening date, bid opening time and bid number should be entered on the bottom left corner of the pink envelope. Seal the "PINK" envelope. Unsealed envelopes will be considered opened and thus rejected.
- c. The **Bid Information** pages generated in the MAPS system shall be printed, signed and placed

in a separate envelope and sealed. This envelope shall be labeled in the bottom left corner with the name of the company placing bid and the bid file number. Seal this envelope. Unsealed envelopes will be considered opened and thus rejected. All envelopes should be placed in a sealed container for delivery to the MDE. It shall not be necessary that any other sections of this document be returned with the bid.

- d. Bids delivered by Federal Express, UPS, or any other such deliverer's envelope shall be sealed in a separate envelope inside the deliverer's packaging. Failure to do this may cause the bid to be inadvertently opened and thus rejected. **Bids sent via regular or express mail must be sent to the Office of Child Nutrition, P.O. Box 771, Jackson, MS 39205. The U.S. Post Office will not deliver mail to 500 Greymont Ave. Jackson, MS 39205.**
- e. Fax bids will not be accepted.
- f. Only bids submitted electronically in MAPS, bid forms furnished with this solicitation, and the signed completed bid summary and bid information pages generated by the MAPS system will be considered. **Signed bid forms must be original signature.**
- g. This bid document must be used without alterations.
- h. Bids that do not contain the items listed in section 2.12 b and c will not be considered incomplete and thus rejected.

2.13 Award:

- a. It is the intent of the MDE to award a contract to the lowest responsible bidder meeting specifications. Awards will be based on the total price of all items as presented on the Bid Summary Page.
- b. MDE reserves the right to ascertain, subsequent to the bid opening, whether or not a bidder meets the requirements to be considered a responsible bidder. If it is determined that the bidder is not a responsible bidder and the determination is substantiated and justified to the satisfaction and approval of the Mississippi Board of Education, bids submitted by that bidder will be rejected. The criteria used to determine responsibility shall include, but is not limited to, the following:
 - 1. Delivery Ability:
Bidder must demonstrate, or has demonstrated to MDE, the ability to deliver all the items on the bid list in accordance with Delivery Times and Places section 3.1.10 of this bid.
 - 2. Capacity:
Bidder must demonstrate to MDE that they have the physical capacity as well as financial capability to procure and store the merchandise covered by the contract in the volume necessary to efficiently administer the provisions of the contract.
 - 3. Reliability:
For a bidder to be declared a responsible vendor they must have a proven record of service in the administration of a contract of this size and this type. A distributor may be considered unreliable thus non-responsible if for any reasons, other than reasons beyond their control, they have violated any of the requirements listed herein or have caused the cancellation of a contract of this type or have failed to properly communicate with participating entities on matters essential to a contract of this type.
 - 4. Accounting Procedures:
A bidder, to be considered for award, must clearly demonstrate to MDE the capability to provide accurate, reliable and timely invoices, statements, and credits. Further,

they must demonstrate the ability and capability to provide any and all data necessary to accomplish an accurate and time efficient audit of cost on Group "B" and Group "C" items being purchased under the cost process. (See Product Designation section 5.5) Invoices generated for orders placed on the MDE on-line ordering system (MAPS) must only include allowable, allocable costs of goods for the use of school foodservice authorities solely. Allowable, allocable costs are considered to be the cost of goods for use by school foodservice programs exclusively.

5. Facilities and Equipment:

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

6. Delivery Equipment:

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

- c. After bids have been opened and tabulated, the bid evaluation team will check all aspects of the low bidder's proposal. If the proposal is found to be error free and does, in fact, represent the lowest responsive, responsible offering, that bid will then be presented to the Mississippi Board of Education with recommendation for approval to award. If, however, an error is discovered and the error is a mistake in the extension, the correct extension will be applied. Should a corrected extension cause the bid price to be escalated to such an extent that the bid was no longer "low" then the same evaluation would be applied to the next low bidder's offering until a true low bid would be selected.
- d. Each bidder must complete the appropriate sections of the bid form for each region on which a bid is submitted. Although it is unlikely that the state will award a contract for the entire state to one distributor, state officials reserve the right to limit the award on the basis of conditions as stated in Section 2.13 paragraph b. In addition, MDE reserves the right to award regions based on what is clearly in the best interest of recipient agencies and the state.

2.14 Taxes:

Purchases made under provisions of any contract established as a result of this invitation are exempt from federal, state and local taxes unless otherwise noted and bidders should quote prices which do not include such taxes.

2.15 Gifts, Rebates, Gratuities:

Acceptance of gifts from contractors and the offering of gifts by contractors are prohibited. No employee of MDE, any school district within the state, or any other entity purchasing or receiving food under provision of the contract issued as a result of this invitation shall accept or receive, either directly or indirectly, from any person, firm or corporation to whom any contract for the purchase of commodities, equipment or services has been issued, any gift, rebate or gratuity. Violations of this provision are punishable under the laws of the State of Mississippi.

2.16 Bid Information:

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

2.17 Disclosure of Confidential Information:

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

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

2.19 Exceptions to Confidential Information

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

- (1) is rightfully known to the recipient prior to negotiations leading to this agreement, other than information obtained in confidence under prior engagements;
- (2) is generally known or easily ascertainable by nonparties of ordinary skill in the business of the customer;
- (3) is released by the disclosing party to any other person, firm, or entity (including governmental agencies or bureaus) without restriction;
- (4) is independently developed by the recipient without any reliance on confidential

- information;
- (5) is or later becomes part of the public domain or may be lawfully obtained by the State or Contractor from any nonparty; or,
- (6) is disclosed with the disclosing party's prior written consent.

2.19 Application:

It is understood and agreed by the vendor that this contract is entered into solely for the convenience and any economical benefit afforded to school districts and other qualified entities of the State of Mississippi. All purchases made by or for the school districts and other qualified entities, of products included under provisions of this contract shall be purchased from the distributor receiving the award, and shall be the manufacturer's labeled product as specified in Product Group "A" and distributor supplied products as bid in Group "B" and Group "C". Distributors will not be permitted to substitute any item except as may be approved in advance by the MDE, provided, however that distributor choice and private label products shall not be covered by this clause.

2.20 Indemnification:

The vendor shall protect, defend, and save the MDE, its officials, employees, departments and agents harmless against any demand for payment for the use of any patented material, process, or device that may enter into the manufacture, construction, or form a part of the work covered by either order or contract; and from suits or a charge of every nature and description brought against it for, or on account of, any injuries or damages received or sustained by the party or parties by or from any of the acts of the contractor, their employees, or agents; from all liability claims, demands, judgments and expenses to the persons or property occasioned, wholly, or in part, by the acts or omissions of contractor, agents or employees.

2.21 Bid Openings:

Bid openings will be conducted open to the public. The openings will serve only to open, read and tabulate the bid prices of each bid. No discussion will be entered into with any vendor as to the quality or provisions of the specifications and no award will be made either stated or implied at the bid opening. Any vendor making provisions to service a contract on the basis of information obtained at the bid opening does so at their own risk. The MDE has no obligation to any contract except as would be authenticated by a written notification of award from MDE.

2.22 Substitute Distributor:

The term substitute distributor for purposes of this document shall mean the distributor selected to take over the administration of a contract canceled by the original contractor or by MDE. The selection of a substitute contractor may result in awarding the contract to the next low responsible bidder based on the bids received when the original award was made, or the selection may be made on the basis of a new competitive bid process. If a new competitive bid process is required, a bid from the distributor causing cancellation will not be considered. (See Default section 3.1.8).

2.23 Special Products Stocking and Recovery:

Because of the nature of this contract, distributors may be required to stock items not normally

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

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

2.24 Duration and Termination:

This contract shall be in effect for twenty-four (24) months, with the option to renew for three additional one-year periods, unless terminated by MDE or the contractor as herein provided.

The Mississippi Department of Education or the Contractor may terminate this agreement for any reason after giving thirty (30) days' written notice specifying the effective date thereof to the other party. In accordance with 7 CFR 250.14(d)(6), the contract may be terminated for cause by the state or the contractor upon 30 days written notice.

In accordance with 7 CFR 250.14(d)(5), the contract may be canceled by the state immediately due to noncompliance on the part of the warehouse management. If this contract is terminated for non-compliance by MDE and a rebid is required, the prime contractor who was terminated by MDE will not be permitted to bid. Further, that contractor, by having the contract terminated for non-compliance, shall have forfeited the right to bid on any contract originating from this office for the remaining contract period of the original contract plus an additional contract period or for twenty-four (24) months, whichever is greatest.

In the event of a termination initiated by the contract distributor, the distributor will be required to honor all orders or requisitions issued by organizations prior to the effective date of the termination and received by the distributor within a seven (7) day period subsequent to the effective date of the termination. Any orders covered by this clause will be delivered at a price that does not exceed the price set by the contract. Termination by the State does not relieve the distributor of any liability arising out of a default or non-performance. (See Section 3.1.8 Default)

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

In the event of a termination initiated by the contract distributor, the procedures as outlined in Section 2.23 Special Products Stocking and Recovery will not apply.

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

2.25 Standard Contract Conditions:

- a. This contract shall be governed in all aspects as to validity, construction, capacity, and performance or otherwise by the laws of the State and the United States.
- b. Contractors providing service under this invitation for bids, herewith, assures the MDE that they are conforming to the provisions of the Civil Rights Act of 1964 as amended.
- c. Contractors shall comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Labor regulations (41 CFR Part 60).
- d. State Sales and Use Tax Certificate of Exemption form will be issued upon request.
- e. The contractor understands that the State, in accordance with Federal Law and U.S.D.A Policy prohibits discrimination against its customers, employees, and applicants for employment on the bases of race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or if all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all prohibited bases will apply to all programs and/or employment activities.)

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

- f. The contractor agrees to retain all books, records and other documents relative to this agreement for three (3) years after final payment. The MDE, its authorized agents and/or state/federal representatives shall have full access to, and the right to examine any of said materials during said period. If an investigation or audit is in progress, records shall be maintained until stated matter is closed.
- g. Any product offered which is not labeled in such a manner as to permit interstate transport will be rejected. Packers and/or producers located within the State of Mississippi must understand that Mississippi Department of Agriculture inspection labels will not qualify under provisions of this Invitation to Bid.
- h. Bidders shall comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7401-7671q), Section 508 of the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), Executive Order 11738 and Environmental Protection Agency regulations, (40 CFR Part 15), which prohibit the use under non-exempt federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities.

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

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

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

- j. By signing this document, the contractor certifies that this bid is made without prior understanding, agreement or connection with any corporation, firm or person submitting a bid for the same materials, supplies or equipment, and is in all respects fair and without collusion or fraud. The contractor certifies that collusive bidding is a violation of federal law and can result in fines, prison sentences and civil damage awards.
- k. The contract distributor shall be liable for gross receipt taxes in accordance with Mississippi statutes.
- l. The contractor shall perform all services as an independent contractor and shall discharge all of its liabilities as such. No act performed or representation made, whether verbal or written, by the contractor with respect to third parties shall be binding on the Mississippi Department of Education.
- m. Authority to Contract: Contractor warrants (a) that it is a validly organized business with valid authority to enter into this agreement; (b) that it is qualified to do business and in good standing in the State of Mississippi; (c) that entry into and performance under this agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind, and (d) notwithstanding any other provision of this agreement to the contrary, that there is no existing legal proceedings or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this agreement.
- n. Modification or Renegotiation: This agreement may be modified, altered or changed only by written agreement signed by the parties hereto. The parties agree to renegotiate the agreement if federal and/or State revisions of any applicable laws or regulations make changes in this agreement necessary.

- o. Representation Regarding Contingent Fees: The contractor represents that it has not retained a person or entity to solicit or secure a State contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee.
- p. Contractors must comply with section 6002 of the Solid Waste Disposal Act Section 6002 which includes procuring items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable.

2.26 Non-Appropriation Clause:

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

It should be noted that the distributor will be notified as soon as practicable of a pending cancellation under this section.

2.27 Additional Item or "Bracket":

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

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

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

Cost Per Unit	Fee Per Unit (Case)
\$ 15.00 -- Or Less	\$ 1.50
\$ 15.01 -- \$ 20.00	\$ 2.00
\$ 20.01 -- \$ 25.00	\$ 2.50
\$ 25.01 -- \$ 30.00	\$ 3.00
\$ 30.01 -- \$ 35.00	\$ 3.50
\$ 35.01 -- \$ 40.00	\$ 4.00
\$ 40.01 -- \$ 45.00	\$ 4.50
\$ 45.01 -- \$ 50.00	\$ 5.00
\$ 50.01 -- \$ 55.00	\$ 5.50
\$ 55.01 -- \$ 60.00	\$ 6.00
\$ 60.01 -- \$ 65.00	\$ 6.50
\$ 65.01 -- \$ 70.00	\$ 7.00

\$ 70.01 -- \$ 75.00	\$ 7.50
\$ 75.01 -- \$ 80.00	\$ 8.00
\$ 80.01 -- Over	\$ 8.50

b. The fee of catch weight items not on the list shall be:

Cost Per Unit	Fees Per Pound
\$ 1.00 -- Or Less	.13
\$ 1.01 -- \$ 1.25	.16
\$ 1.26 -- \$ 1.50	.19
\$ 1.51 -- \$ 1.75	.22
\$ 1.76 -- \$ 2.00	.25
\$ 2.01 -- \$ 2.25	.28
\$ 2.26 -- \$ 2.50	.31
\$ 2.51 -- \$ 2.75	.34
\$ 2.76 -- \$ 3.00	.37
\$ 3.01 -- \$ 3.25	.40
\$ 3.26 -- \$ 3.50	.43
\$ 3.50 -- Over	.46

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

2.28 Service Level:

The contractor shall fill all original orders at a monthly average of 98% or above on the scheduled delivery day.

2.29 Assignment:

The contractor shall not assign, sell or subcontract in whole or in part, its rights or obligations under this agreement without prior written consent of the MDE. Any attempted assignment or sale of the contract without said consent shall be void and of no effect.

SECTION 3: INFORMATION AND SPECIAL CONDITIONS

3.1 Purpose:

The purpose of this Invitation for Bid (IFB) is to establish a contract or contracts between the Mississippi Department of Education, Office of Child Nutrition and distributors for the pricing of food and supplies and the distribution of those items. This contract will establish a fixed price that participating school districts and other qualified entities will pay for any item covered by the contract during the term of that contract.

The successful distributors will be responsible for purchasing, warehousing and distributing the food and supplies. Distributors are obligated to furnish the items covered by the contract at prices that do not exceed the contract price.

3.2 Term:

The terms of these contracts shall be for a period of 24 months with the option to renew for three additional one-year periods. The effective date is expected to be July 1, 2018, through June 30, 2020. The Mississippi Department of Education (MDE) reserves the right to extend the term for up to 90 days to continue a source or sources of supply until new or replacement contracts are completed. Any contract extension is contingent upon approval of the MDE and the contractor(s).

3.3 Volume:

The Estimated Usage for each item is indicated in the MAPS bidders system and are reflective of actual usage for the period of January 1, 2017, through December 31, 2017, are region specific, and accurate to the best of our ability to gather data. New items to this solicitation will indicate 100 for estimated usage to act as a multiplier. Bidders understand that Estimated Usage quantities do not constitute a guarantee to purchase the same or greater amount of actual requirements.

3.4 Restriction:

No purchase shall be made under the provisions of the contract of items not specifically listed and authorized by the contract. Additional or "Bracket" items as set forth in 2.27 are authorized.

3.5 Additions/Deletions/Changes:

The MDE reserves the right to add or delete items and/or contractors and to make changes that are within the original scope of the contract during the term of the contract.

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

The fee associated with any new item (direct from manufacturer or distributor Group A, Group B or Group C) will be calculated using the following method: The distributor's fees for all items in the group (A, B, or C) to which the new item will be added will be totaled and the unit costs for all items in the group to which the new item will be added will be totaled. The totaled fees will then be divided

by the totaled unit costs to derive a percentage. This percentage will then be multiplied times unit cost of the new item to determine the fee associated with the new item. For example, if the new item will be added to Dry Food (Group B), and the existing fee percentage for that group was 6%, then 6% would be multiplied times the price of the new item (ex. - \$32.50). The calculation would then be $.06 \times \$32.50 = \1.95 . The fee to be charged by the distributor for the new item would be \$1.95.

3.6 Other Agreements:

Upon the effective date of the contract all other agreements or portions of other agreements held by participating entities which pertain to items covered by the contract shall be void, except as noted in section 2.27 Additional Item.

3.7 Definitions:

a. Payment:

The term payment as used in this document shall refer to the amount paid the distributor for food and supplies to be delivered to the user entities. When applicable to Group "A" items, it shall mean the price established by the MDE/Manufacturer contract. The distributor cannot require the manufacturer to pay any volume incentives on MDE Group "A" items. In-bound freight charges shall not be included in the payment cost. (Note: MDE Manufacturer contract items are priced F. O. B. delivered to the distributor warehouse.) Shipments of Group A products must be received and unloaded at the distributor's warehouse. No slotting fees, unloading fees, or lumber fees may be added to the manufacturer's cost. Costs of receiving and unloading Group A products may only be recovered through the fixed fees charged participant for each of these items.

When applicable to Group "B" or Group "C" products being purchased by the distributor for delivery to participating entities, it shall mean the price established by the contract between MDE and the Distributor, exclusive of the fixed fee.

b. Unit Cost

Unit Cost is the price paid by the distributor to have the item delivered to that distributor's dock (unless in-bound freight is broken out separately, see sections 3.1.5 and 3.1.6 (5)). When entering pricing in the MAPS system, the Unit Cost shall not include any distributor mark-up or anticipated costs to be borne by the distributor. The listed cost shall include any deductions for bill-backs, promotional allowances, volume discounts, or bid allowances. Comparisons in the unit costs listed will be made between distributors. Significant differences will be noted and questioned. The failure to include allowances or discounts will result in the disqualification of the bid.

c. Fixed Fee:

The term fixed fee as used in this document shall mean the amount the distributor will be paid for receiving, storing, and delivering the items covered by the contract. All freight charges incurred in the delivery to the user entity as well as mark up or profit shall be recovered in the "fixed fee" bid by the distributor. In-coming freight (to the distributor) and fixed fee costs are to be bid separately in the MAPS system and will be combined with *unit cost* to arrive at an Extended Total per item. ***The fixed fee shall be***

firm for the term of the contract. Freight fees are subject to change at semi-annual price adjustments or in special circumstances as indicated in Section 3.1.5 Computing Freight.

d. Damaged Item:

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

e. Current Label:

Current Label shall refer to a product that can be substantiated as "fresh" by being tied to the code date on the containers. Should the product state a "use before date" that date shall not expire prior to a period within 60 calendar days subsequent to any transaction that would require a "repurchase" by any succeeding contractor. (See Section 2.23 Special Products Stocking and Recovery.)

3.1.0 SPECIAL CONDITIONS

3.1.1 Bids Based on State Specifications:

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

3.1.2 Unit Price:

Each item is to be priced separately by offering the standard unit price as per bid unit designation in the Item Information section of the MAPS system. In the event that the unit designation is different than the standard package offered by a bidder, that bidder shall convert the unit cost to conform with the unit set forth in the specifications. [e.g. bid unit is case of 150 pieces. Bidder wishes to bid a case of 300 pieces with the unit case cost of \$20. Bidder would divide the unit cost by 300 ($\$20/300 = .0666/\text{piece}$) and then multiply it by the standard bid unit case count ($.0666 \times 150 = \$9.99$). The unit cost for this item would be \$9.99.] The fixed fee and freight would also be prorated to the bid unit case count. Failure to make the conversions may be cause for rejection. (See additional example in Section 6.5) This does not require repackaging to meet bid requirement. Unless otherwise noted, bidders will quote on the pack size specified in the Item Information section of the MAPS bidding system.

3.1.3 Firm Bid Price:

The Mississippi Department of Education (MDE) is requesting firm pricing for six months beginning July 1, 2018. On December 1 and June 1 of each year during the term of the contract, contractors may petition in writing for a price increase. Petitions must be received by the MDE not later than December 10th and June 10th of each year. The approved increase will become effective January 1 and July 1. If an event or events should occur that, through no fault of the contractor, would cause an unusual, unseasonable escalation it would

be unreasonable to wait until the next scheduled time for a price change, MDE will entertain a request for price adjustment at a time other than set forth above. See 3.1.5 (Computing Freight). Any request for a price increase is subject to a negotiation and will be approved or disapproved on the basis of supplier invoicing/quotes as well as data provided in the Food Institute Report and/or other third party market sources. In the event there is an uncustomary drop in the market price of any item or items covered by the contract, MDE will request a voluntary reduction in pricing by the contractor. Should the contractor refuse, MDE reserves the right to enter into price negotiation with the other suppliers, provided however, that no agreement will be made with an alternate supplier that does not provide a price lower than the price provided by the contract with the primary supplier, and the reduction must be commensurate with the reduction in the market price.

3.1.4 Fuel Surcharge

When the retail cost of diesel has increased by no less than .30 above the baseline fuel price per gallon (baseline + .30) the distributor may petition the MDE Office of Purchasing and Food Distribution for a \$2.00 surcharge per delivery. (Baseline fuel price will be set as the price per gallon of diesel on the US Department of Energy https://www.eia.gov/dnav/pet/pet_pri_gnd_dcus_sca_w.htm web site on the date the bid is mailed.) For each additional .15 increase in diesel prices, the surcharge may be increased by \$1.00 surcharge per invoice with MDE approval. (See example provided in the chart below.)

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

Baseline Fuel Price per Gallon*	Current Price	Surcharge
\$2.818	\$X.00 + .00	\$0.00
	\$X.00 + .30	\$2.00
	\$X.00 + .45	\$3.00
	\$X.00 + .60	\$4.00
	\$X.00 + .75	\$5.00

*Baseline will be set as the price per gallon of diesel on the EIA.gov website on the date the bid is solicited.

The MDE OCN Division of Purchasing and Food Distribution will monitor the price of fuel once a surcharge has been instituted. Fuel surcharges shall be reduced based on the same formula. For each .15 cent decrease \$1.00 will be removed from the approved surcharge until the fuel prices reach baseline + .30. Should the price go below baseline + .30, there will be no surcharge authorized.

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

3.1.5 Computing Freight:

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

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

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

The fixed fee, exclusive of the in-bound freight cost, shall be firm for the full term of the contract. The in-bound freight costs, except during semi-annual price adjustments, are subject to escalation/de-escalation based on two specific criteria only:

1. An increase or decrease in the cost of fuel of more than 30 cents per gallon over a 30-day period (see Firm Bid Price 3.1.3).
2. Occurrence in the trucking industry that would affect in-bound freight cost and would have an industry wide and nationwide impact.

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

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

3.1.6 Definitions:

1. Pack size- with some items the bid unit does not represent a package configuration by which the item would normally be purchased. In such instances, you will be required to bid according to the designated bid unit and also to state how the product is packaged and to provide a delivered cost for purchase unit.
2. Count - shall be stated as numbers of pieces, servings, gallons, etc., per purchase unit. In some instances this may not be applicable.
3. Purchase unit - shall mean the package configuration (i.e., case, carton, box, bag, etc.) by which the product would normally be sold. This shall also mean packaging being referred to when the term "case price" is applicable.

4. Bid Unit - the unit designation which shall be applicable to all pricing offered for bid evaluation purposes. Unit cost, freight, fixed fee, estimated usage and the extended cost shall be stated in terms of the designated bid unit.
5. Freight per Unit - shall be stated as the in-bound freight cost per bid unit based on the freight cost per purchase unit offered by the bidding entity; i.e., should the freight per purchase unit be \$ 1.00 and there are 100 bid units in a purchase unit, the freight per bid unit would be 1 cent each.

3.1.7 Packaging:

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

3.1.8 Default:

In case of default on the part of a distributor, the MDE may elect to have those entities affected by the default purchase and receive needed items from other sources until a substitute distributor is designated. In such cases, the contractor in default will be held liable for any cost differential between the approved contract price and the acquisition cost of items purchased from another source. Provided, however, that items purchased by the entities in this manner shall be approved equal in quality and quantity to those required by the specifications. The contractor in default will not be expected to pay a price differential on a product considered by the industry to be superior in quality to the product specified in the original bid invitation. Provisions of Section 2.24 dealing with cancellation shall apply in this instance.

3.1.9 Contract Application:

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

3.1.10 Delivery Times and Places:

Deliveries shall be required to all sites listed in Section 8 provided on the enclosed CD.

- a. Frequency of delivery shall be weekly to all ordering sites that place an order of at least \$500 for refrigerated/frozen foods and \$350 for dry and non-food items. Sites that are unable to meet the mandatory minimums are entitled to a minimum of twice monthly orders. (Exceptions to the mandatory minimum requirements may be granted during summer feeding. Distributors should coordinate the delivery of smaller than minimum orders between recipient agency and the Office of Purchasing and Food Distribution.)

- b. Deliveries shall be completed between the hours of 6:30 a.m. and 2:30 p.m. Distributors may be held accountable for employee overtime pay and related fringe benefit costs which results from late delivery. It is agreed that late delivery is delivery after 2:30 p.m.
- c. No delivery shall be required if the participating organization is closed on their delivery day unless agreeable with distributor to change delivery day for that week.
- d. Restocking / Recovery: If a participating organization refuses shipment of an item(s) that was transmitted by that organization to the distributor via the on-line ordering system and the item appears on the receiving report, the distributor is authorized to charge a restocking/recovery fee of not more than 25% of the total cost of the refused item. Each distributor must submit to MDE for prior approval the percentage cost per case that will be charged to ordering entities for restocking.
- e. The MDE reserves the right to add or delete recipients to this program during the term of the agreement. The contract distributor also agrees to provide service at the proposed bid price for any new recipient agency that may be approved to receive donated foods, purchased foods, or non-food within an assigned geographical region.

3.1.11 Delivery Schedules:

- a. Schedules shall be submitted to MDE and participating entities for approval and shall remain constant for the duration of the contract.
- b. Drivers and helpers shall deliver merchandise to designated storage areas (dry, refrigerated and frozen). Drivers or helpers shall not be required to stow merchandise on shelves nor stack in reach-in coolers, freezers, or other cabinets or to rotate stock.
- c. Drivers and helpers shall request the authorized receiver or the designated representative, to verify the accuracy of quantities of each item, brand and code numbers of each item and condition of merchandise. Each delivery ticket shall be signed by a designated receiver. Variations from the delivery ticket, i.e., shortages, damages, etc., shall be noted on each ticket by the designated receiver and initialed by both the truck driver and receiver. The contractor shall not be required to issue credits for errors not detected at the time of delivery, except for hidden damage.
- d. If deliveries are made wherein shortages or damaged items are noted on the invoice, the contractor will be required to make a redelivery not later than the next day to correct the discrepancies. However, if the shortage was noted and transmitted to the affected entity during the order process (on the receiving report), this requirement will not apply. The participating entity may elect to have the merchandise delivered at their next scheduled delivery day.

3.1.12 Transmittal of Orders:

The order-entry procedure will require that distributors provide automated receiving capabilities that shall necessitate the utilization of a software package capable of receiving information from MDE.

Member organizations will place their orders through the MAPS web site via the internet. Distributors will then retrieve these orders via text file from the MAPS web site. The distributor will pick up this text file and match it against their inventory. The distributor will then modify this text file for product availability and upload the modified text file to the MAPS web site. Distributors shall have the capability to receive multiple files containing food, non-food, and produce orders via the internet after the order cut off time of 11:30 a.m. Distributors shall have the capability to check each order, note shortages, and transmit shortage data, if applicable, back to the member organizations on their receiving report via the internet within 24 hours. Also, the distributors shall have ordering capability for organizations to order items that have been identified as short or out.

Distributors shall identify a telephone contact within their organization that member organizations can contact as needed.

In the future the Member organizations shall have the ability to order USDA commodities through the automated order entry system. Distributors shall have the capability to accommodate this proposed enhancement.

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

In case of a system malfunction, the MDE and ordering entities will either verbally phone in orders or fax orders to the distributors.

3.1.13 Item Substitute and Out-of-Stocks:

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

3.1.14 Payments:

In accordance with state law (Section 31-7-305(2) MCA) all payments must be made within 45 days after receipt of goods and correct invoice. Distributor should notify MDE of any delinquencies.

Invoices generated for orders placed on the MDE on-line ordering system must only include allowable, allocable costs of goods for the use of school foodservice authorities solely. Allowable, allocable costs are considered to be the cost of goods for use by school foodservice programs exclusively. If a recipient agency falls more than sixty (60) days in arrears in payments, a distributor may suspend issues. However the distributor must notify the MDE no less than 10 working days prior to initiating a suspension of deliveries.

3.1.15 Decimals:

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

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

3.1.16 Audits:

MDE personnel shall have the right to audit distributor records relative to any transaction conducted under the provisions of the contract established pursuant to this IFB.

- a. Audits may be made of the contractors cost records as follows:
 1. Prior to contract award on items supported by 3rd party invoice
 2. In response to any request for price increase of either product or freight cost
 3. At any time that price reviews indicate an unexplained fluctuation.

- b. The contractor shall provide acceptable documentation as follows:
 1. Manufacturers invoices
 2. Freight Bills
 3. Inventory Records
 4. Market Bulletins - used for distributor manufactured items and inner company billing items when price changes are requested

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

SECTION 4. USDA DONATED FOODS - CONDITIONS

4.1 Agreement Period:

The effective date of this contract shall be July 1, 2018 through June 30, 2020. Contract distributors may be required to receive and warehouse, and/or deliver some product prior to the official start-up date without additional charges to the state or recipient agencies. Contractors may request a sixty-day extension in the final year of this contract to allow for completion of delivery of USDA Donated Food inventories.

4.2 Price:

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

4.3 Extended Storage:

A contract distributor may charge recipient agencies a fee per month of 25% of the regional distribution fee per case, for product left in storage beyond sixty days.

4.4 Petitions for Price Escalations:

Bid prices shall be firm for the initial contract period (24 months). Distributors may petition for a price increase in writing on fees at the end of the initial contract period and at the end of each extension year with the state having the right of refusal. All price escalations granted will be based on the Consumer Price Index.

4.5 Transfers:

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

4.6 Insurance:

The contract distributor shall provide "All Risk" escalating warehouse contents insurance with coverage equal to the maximum cost value of the donated foods in a warehouse at any one time. Evidence of adequate coverage shall be required of the contract distributor upon bid award and at each contract renewal date.

4.7 Licenses:

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

4.8 Contract Termination:

The contract may be canceled with 30 calendar days' written notice by the contractor with

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

4.9 Shortage and Damages:

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

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

4.10 Freight Charges:

All donated foods are shipped prepaid, product and freight.

4.11 Volume:

The volume statewide is approximately 395,932 cases per year. Volume by regions ranges from 12,867 to 22,814 cases of dry and 28,650 to 48,325 cases of refrigerated \ frozen per year.

4.12 Items:

Based on 2017 availability, the total number of line items of regular donated foods is approximately eighty (80) of which forty (40) will be carried in inventory at any one time. However, the number of items might vary depending on availability and demand.

4.13 Storage Requirements:

About thirty-five percent (35%) of the volume is dry (canned or packaged), sixty percent (60%) frozen, and five percent (5%) refrigerated.

4.14 Inventory Turns:

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

4.15 Pallets and Slots:

There will be about 640 pallets in storage at peak based on 36,000 cases per month. The state can request that pallets be of a specific height, however, neither the state nor USDA can guarantee the request will be honored. If it is necessary to break pallets down to accommodate a distributor's rack height restrictions, it shall be at the expense of the distributor.

4.16 Case Size:

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

4.17 Truck Shipments:

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

4.18 Product Loading:

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

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

4.19 Product Unloading:

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

4.20 Schedules:

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

4.21 Receiving Procedures:

Since contract distributors are responsible for all merchandise received, they must exercise similar or greater care in receiving USDA donated foods. Loads must be inspected on arrival

for product condition and temperature and for damage and infestation. Procedures for receiving inbound freight are as follows:

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

Recoup damaged merchandise so that all foods suitable for human consumption are salvaged for program use.

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

4.22 Condition of Shipments:

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

4.23 Sanitation Requirements:

Contract distributors' warehouses may be routinely inspected by state officials for sanitation and temperature requirements. Contract distributors shall obtain all required Federal, State and local health inspections and provide MDE with evidence that inspections/approvals are current upon bid award and upon renewal. Trucks delivering USDA donated foods may be inspected for sanitation and temperature from time to time either by USDA or state authorities.

4.24 Warehouse Requirements:

A contractor must provide adequate facilities for storage of the foods indicated in this document, including unusual surges in volume, and have an adequate truck fleet to deliver predicted volumes of frozen, refrigerated, and dry foods. The state reserves the rights to

examine a bidder's warehouse to assure that the above qualifications are met prior to award of any contract.

Contract distributors must have adequate warehouse facilities for the following:

- Dry Groceries - forced ventilated space
- Frozen Foods - 0 degrees Fahrenheit or below
- Refrigerated Items - normally 36 degrees Fahrenheit

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

4.25 Deliveries to Recipient Agencies:

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

4.26 Minimum Orders:

Every delivery site is entitled to one (the first) delivery a month at the regular rate per case regardless of the number of cases ordered. The second or any additional deliveries in a month are required to be a minimum of twenty (20) cases per site.

A recipient agency may order less than the minimum order size at any time within a month, by paying for a 20-case order. For example, if a recipient agency wishes to order 17 cases, and pay the 20-case minimum, the charge would be 20 x the case rate.

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

Recipient agencies that receive warehouse issues are pre-identified. However, any recipient agency may override this identification by ordering 20 cases or paying the per case rate x 20 and receiving a delivery on the next scheduled delivery day.

Lump sum deliveries on exchangeable pallets must be made weekly to the Jackson Public Schools warehouse(s) at 75% of the bid price.

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

4.27 Scheduled Delivery Days:

Deliveries shall be made on a regularly pre-scheduled day of the week (or month), as determined by the contract distributor. Distributors must deliver weekly, provided the 20-case minimum order of donated foods is met. **At a minimum, distributors must deliver donated foods at least once per month, unless the recipient organization has agreed to less frequent delivery. (7 CFR 250.24)**

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

4.28 Self-Service Agencies:

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

4.29 Recipient Agency Orders:

Separate or congregate orders will be submitted by recipient agencies indicating each drop site. Order forms will have distributor's item numbers, site numbers, and "Bill To" numbers. Recipient agencies must complete Order Form FD-3A and submit to the distributor to arrive at least 48 hours in advance of shipment or pickup. For example, orders for donated foods to be delivered on Thursday must arrive at the distributor's mailing address prior to noon Tuesday.

Future enhancements to the MDE Order Entry system involve the addition of ordering USDA commodities via electronic transfer. (Refer to Section 3.1.12 Transmittal of Orders)

4.30 Recipient Agency Delivery Tickets (Invoice):

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

4.31 Payments:

The contract distributor may invoice recipient agencies monthly. A contract distributor shall submit statements monthly to recipient agencies. Each invoice shall include a summary of issue tickets for each delivery site. Referenced tickets shall be listed in numerical sequence and show the total number of cases, bags, etc. issued. In accordance with Mississippi law (Section 31-7-305 (2) MCA) all payments must be made within 45 days after receipt of goods and correct invoice. Distributor should notify MDE of any delinquencies. If a recipient agency falls more than sixty (60) days in arrears in payments, a distributor may suspend issues, after notice to the state no less than ten (10) working days from the suspension.

4.32 Accountability:

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

4.33 Stock Allocations:

The state will send the contract distributor notices of allocation for all food items. Contract distributors must enter allocation data in their computers and use this information as a base for generating reports.

4.34 Computer Capability:

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

4.35 Minimum Report Requirements:

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

- a. Notices of Product Arrival: Contract distributors shall notify the state daily by telephone, fax or e-mail of product arrival.
- b. Receiving: All documents, FNS-57, *Advance Shipping Notifications*, including Bills of Lading, related to the receipt of items at warehouses shall be forwarded to the state office within twenty-four hours of unloading and verification of receipts.
- c. Notice to Recipient Agencies: Monthly notices shall include the amount allocated, delivered, and balance by delivery order number.
- d. Monthly Inventory: Each contract distributor shall maintain perpetual inventory of USDA donated foods. Moreover, a contract distributor shall provide the state with monthly inventory reports on all items.

Inventory reports shall show by delivery order number, the value of the food per case, amount allocated, total value of amount allocated, amount shipped, total value of amount shipped, balance on hand, and total value of balance on hand. Each report shall reflect all delivery order numbers for the current year. The report is due to the state five working days after the last delivery day of the month.

- e. Year-End Utilization and Activity: Contract distributor shall provide the state with an end-of-year utilization accountability report. The report shall be in the same format as the monthly inventory report, but shall also include the required information by delivery order by recipient agency.
- f. Loss Reports: USDA products damaged in the warehouse shall be reported to the state agency on a Food Loss Report. Distributors are required to report all losses on a monthly basis. Reports are due to MDE Office of Child Nutrition no later than the 5th working day after the first of the month; any occurrence resulting in a loss totaling more than \$500 must be reported immediately to MDE.

4.36 Reconciliation and Closeout:

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

4.37 Disasters:

In the event of a declared disaster, MDE is responsible for supplying relief to affected areas. MDE must have access to commodities on hand in the distributors' warehouses. This would require access to the distributors' personnel and facilities after hours, weekends, and holidays in the event of a disaster. An account would be set up for MDE for the purpose of billing and payments for commodities used during the disaster relief effort.

4.38 USDA Commodities Bid Submission

USDA Commodities regional bid sheets are located in Section 7 of the enclosed CD. The sheet is in MS Excel format and bidders may enter the fee per case for Dry and Refrigerated/Frozen commodities for the regions they shall be bidding. The sheet will automatically calculate the total fees. Print the completed USDA Commodities bid sheet for submission.

SECTION 5. BID INSTRUCTIONS

5.1 Bid Package:

The bid package consists of the following

Section 1A	Invitation to Bid Form
Section 1B	Debarment Certification
Section 2	General Instructions
Section 3	Information and Special Conditions
Section 4	USDA Donated Foods Conditions
Section 5	Bid Instructions
Section 6	Product Requirements

The following items are provided on CD enclosed with bid package

Section 7	USDA Donated Foods bid sheet
Section 8	List of Participant Organizations and Delivery Sites
Section 9	USDA Commodity Organizations only
Section 10	Statewide Regional Map

5.2 Invitation to Bid Form:

All information requested on the invitation to bid form (Section 1A) must be completed with original signature affixed. Incomplete and/or unsigned forms may be rejected. Special attention should be given to instructions and general conditions and definitions.

5.3 Item Information and Item Bid Information Worksheets:

Item information including approved brands and specifications can be found in the MAPS system for all items that a bid will be placed.

5.4 Bid Form:

Bids must be presented on the forms generated by this IFB and the MAPS system. Bids submitted on any other form, unless prior approval for such deviation is granted by MDE, will be rejected. See section 2.11 for clarification.

5.5 Product Designation:

Products are designated as Group A, Group B, Group C and USDA Commodities.

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

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

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

USDA Commodities: These are USDA donated food items (dry, refrigerated and frozen) delivered to the distributor's warehouse. The distributor will be reimbursed for storage and delivery of the commodity items to participating entities on the basis of the fixed fee established by the contract between MDE and the distributor. (See Section 4.2 Price).

MDE reserves the right, during the term of the contract, to delete items from Group "B" or Group "C" and either add them to Group "A" or purchase them outright from a selected source. If the latter method is chosen, MDE will purchase and pay for these items and have them delivered to the distributor holding the contract at that specific time. The distributor would be required to deliver the items to the user entity for a fee established using the procedure in section 3.5 Additions / Deletions / Changes. Any source selection for these items will be in compliance with all existing applicable Federal/State regulations, statutes, or guidelines.

5.6 **Dry Food Products:**

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

5.7 **Preference for Awarding Contracts:**

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

SECTION 6. PRODUCT REQUIREMENTS

6.1 Item Identification (ID):

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

6.2 Product Protection Guarantees:

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

6.3 Buy American:

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

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

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

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

6.4 Brand "Being Offered":

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

6.5 Units of Purchase:

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

Example:

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

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

- a. Raw or Cooked: Meats, poultry and seafood are deemed to be raw (uncooked) unless the term "cooked" is used. Term "cooked" implies "fully" cooked unless a lesser degree of doneness is specified. The term "precooked" implies that additional cooking is necessary before service.
- b. IQF: The term "Individually Quick Frozen," or IQF, essentially means that the parts can be removed individually from packages. The term "quick" means frozen "at the time" in a freezer tunnel, either by air blast, nitrogen or carbon dioxide.
- c. CN Label: When a product is CN (Child Nutrition) labeled, it is "certified" by the packer to conform to the nutritional requirements of the USDA Food and Nutrition Service (FNS). The label shows the food component contribution made by a given amount of product toward CN meal component requirements.

- d. **Grades:** The grades specified herein for fruits, juices and vegetables refer to "Packer Grades" except as specifically indicated otherwise. Packer Grades, offered by major buying groups, have proven reliable over the years, in that these groups utilize USDA standards.
- e. **Standards of Identity:** All products must conform to U.S. minimum standards requirements. If not, the supplier (packer) is in violation of not only the contract with the school district, but also with the Federal Food and Drug Administration and/or the Federal Trade Commission.

Three (3) important Federal regulations pertaining to canned foods are listed below. These and other federal and state regulations are automatically part of bid requirements.

1. Net Container Quantity - The minimum net quantity of all products in cans and jars shall be in accordance with Section 401 of the Federal Food, Drug, and Cosmetics Act, regarding individual specifications for standards of fill (21 CFR Part 100-169).
2. Fill of Containers - All products shall be filled as full as practical under good commercial packing practices without impairment of quality and otherwise in accord with Section 401 of the Federal Food, Drug and Cosmetics Act, regarding individual specifications for standards of fill (21 CFR Part 100-169).
3. Drained Weight - Drained weight of "wet pack" items shall conform to good industry practices and the minimum requirements of the Federal Food, Drug and Cosmetics Act for drained weight, as prescribed in the individual specifications of each product in 21 CFR Part 100-169. Except for whole tomatoes, drained weight is not a factor of USDA grade.

6.6 Approved Brand:

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

- a. Manufacturer's Label - Potential distributors shall offer bids only on those products which are pre-approved items indicating manufacturer's name and product number under "approved brands".
- b. Distributors' Choice or Packer Label - A product identification is in itself sufficient, in the case of certain generic items such as shrimp. The word "Distributor Choice" will appear in the "Approved Brands" drop down menu in the Item Information section of the MAPS bidders site and the contractor may bid any label, providing that the brand offered for bid meets the specifications as listed in the "Item Specifications" section on the Item Information screen of the MAPS bidders site. Bidder shall indicate name and product code on corresponding bid information sheet(s).
- c. Private Label – It shall be intended that only those products carrying a first quality label will be acceptable. The label application and identification shall be based on the attached label description document. (*See Food Service Brands Chart items*)

FOOD SERVICE BRANDS COMPARISON CHART

GROUP	1 ST QUALITY	2 ND QUALITY	3 RD QUALITY
CONCO FOOD SERVICE	AUTOCRAT WHITE	AUTOCRAT BLUE	AUTOCRAT RED
F.A.B., INC.	RESTAURANT'S PRIDE (Preferred)	RESTAURANT'S PRIDE (Dependable)	RESTAURANT'S PRIDE (Advantage)
	FROSTY ACRES	GARDEN DELIGHT	
GOLBON	GOLBON GREEN	GOLBON RED	SILBON BLUE
GORDON FOOD SERVICE	GPS PREMIUM QUALITY	GFS	
FEDERATED	RED & WHITE RED	RED & WHITE BLUE	RED & WHITE YELLOW
	PARADE RED	PARADE BLUE	PARADE YELLOW
	HY-TOP RED	HY-TOP BLUE	HY-TOP YELLOW
PERFORMANCE FOOD GROUP	WEST CREEK	SILVER SOURCE	
PROGRESSIVE GROUP ALLIANCE	PLEE-ZING BLUE	LITTLE MOMMIE RED	PARTAKE GREEN
	POCAHONTAS	MOUNT STERLING	
	ALL KITCHEN GREEN	ALL KITCHEN BLUE	KITCHEN VALUE RED
SYSCO	CLASSIC	RELIANCE	VALUE LINE
U.S. FOOD SERVICE	BLUE	RED	HARVEST VALUE
UNIPRO FOODSERVICE	NUGGET BLACK	NUGGET RED	NUGGET GREEN
	NIFDA RED	CHEF PAK BLUE	ECONO PAK YELLOW
	CODE REGAL	CODE MAJESTIC	-----
	COMSOURCE MERIT	COMSOURCE TRADITIONAL	COMSOURCE CITATION
	UNIPRO MARQUIS (GREEN)	UNIPRO ROYAL (BLUE)	UNIPRO EMBASSY (RED)