

NOTE: Fairfax County Public Schools conducts all procurement activities in accordance with delegated authority from the Purchasing Agent of Fairfax County Government. Bids and proposals in response to FCPS solicitations must be delivered to the address above on or before the date and time stipulated in the solicitation.

IFB 2000002840
Frozen, Refrigerated, Canned, and Premade Foods for the Warehouse

All questions pertaining to this IFB should be submitted in writing to the contract administrator at Imoone@fcps.edu no later than May 23, 2019 @ 10:30 a.m. eastern time. **Questions pertaining to this IFB received after this time will not be answered.**

ISSUE DATE: May 13, 2019	INVITATION FOR BID: IFB 2000002840	TITLE: Frozen Refrigerated, Canned, and Premade Food for the Warehouse
DEPARTMENT: Office of Food and Nutrition Services	DUE DATE/TIME: June 6, 2019 10:30 am	CONTRACT ADMINISTRATOR: Lorna Moone Imoone@fcps.edu

Bids - In accordance with the following and in compliance with all terms and conditions, unless otherwise noted, the undersigned offers and agrees, if the bid is accepted, to furnish items or services for which prices are quoted, at the price set opposite each item, delivered or furnished to designated points within the time specified. It is understood and agreed that with respect to all terms and conditions accepted by Fairfax County the items or services offered and accompanying attachments shall constitute a contract.

Note: Fairfax County does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment in the performance of its procurement activity.

NAME AND ADDRESS OF FIRM:

Telephone/Fax No.:

E-Mail Address:

Federal Employer Identification No:

OR

Federal Social Security No.

(Sole Proprietor):

Prompt Payment Discount: _____% for payment within _____ days /
net _____ days

State Corporation Commission (SCC)

Identification No.:

By signing this bid, Bidder certifies, acknowledges, understands, and agrees to be bound by the conditions set forth in the General Conditions and Instructions to Bidders as described in Appendix A, the Certification Regarding Ethics in Public Contracting set forth in Appendix B, and by any other relevant certification set forth in Appendix B.

BUSINESS CLASSIFICATION – Described in Appendix B - CHECK ONE: ☐ LARGE (Y) ☐ SMALL (B)

☐ MINORITY-OWNED SMALL (X)

☐ MINORITY OWNED LARGE (V)

☐ WOMEN-OWNED SMALL (C)

☐ WOMEN OWNED LARGE (A)

☐ NON PROFIT (9)

CHECK ONE:

☐ INDIVIDUAL

☐ PARTNERSHIP

☐ CORPORATION

State in which Incorporated: _____

Vendor Legally Authorized Signature

Print Name and Title

Date

Sealed bids subject to terms and conditions of this invitation will be received by the Fairfax County Purchasing Agent at 8115 Gatehouse Road, Suite 4400, Falls Church, Virginia 22042-1203 on the due date and time specified, and then publicly opened and read.

AN EQUAL OPPORTUNITY PURCHASING ORGANIZATION



SPECIAL PROVISIONS**1. SCOPE:**

- 1.1. The purpose of this solicitation is to establish a term contract(s) for Frozen, Refrigerated, Canned, and Premade Food for the Warehouse for the Office of Food and Nutrition Services, Fairfax County Public Schools, and Fairfax County Government for the requirements listed in this solicitation.

1.2. **MINIMUM REQUIREMENT:**

- a. HACCP: Fairfax County Public Schools, Office of Food & Nutrition Services requires that manufacturers enforce the practice of Hazard Analysis and Critical Control Points (HACCP) in an era of high food safety concerns among consumers. Bidders are to indicate in the Vendor Information Form, Attachment 5, Section 10, if the manufacturer incorporates the HACCP systems in their plants.

The County may not waive this requirement as a minor informality and failure to practice this requirement shall result in the rejection of the bid.

- 1.3. REQUESTED BID SUBMITTALS: In addition to documents listed in paragraph 10, the following supplemental information shall be submitted with the bid.
- a. One copy of Nutritional Analysis and ingredient listing for each line item.
 - b. Summary of bidder's products recall policy.
 - c. Commodity Distribution Reform Act: manufacturer certification of domestic origin.
 - d. A copy of bidder's catalog and/or price list(s) for unlisted items that FCPS may order during the contract term.

2. PERIOD OF CONTRACT:

- 2.1. The period of this contract shall be from the date of award through June 30, 2022.
- 2.2. Automatic contract renewals are prohibited. This contract may be renewed at the expiration of its term by agreement of both parties. Contract renewals must be authorized by and coordinated through the Office of Procurement Services. FCPS reserves the right to renew the contract for two (2) additional one-year periods.
- 2.3. Notice of intent to renew will be given to the Contractor in writing by the Office of Procurement Services, normally 30 days before the expiration date of the current contract. (This notice shall not be deemed to commit the County to a contract renewal.)
- 2.4. The obligation of the County to pay compensation due the Contractor under the contract or any other payment obligations under any contract awarded pursuant to this Invitation for Bid is subject to appropriations by the Fairfax County Board of Supervisors to satisfy payment of such obligations. The County's obligations to make payments during subsequent fiscal years are dependent upon the same action. If such an appropriation is not made for any fiscal year, the contract shall terminate effective at the end of the fiscal year for which funds were appropriated and the County will not be obligated to make any payments under the contract beyond the amount appropriated for payment obligations under the contract. The County will provide the Contractor with written notice of non-appropriation of funds within thirty (30) calendar days after action is completed by the

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Board of Supervisors. However, the County's failure to provide such notice will not extend the contract into a fiscal year in which sufficient funds have not been appropriated.

3. PRICES AND PRICE ADJUSTMENT:

- 3.1. All prices/discounts shall be F.O.B. Destination and shall include all charges that may be imposed in fulfilling the terms of this contract.
- 3.2. All prices shall be bid per Unit of Measure as specified in the Pricing Schedule with the allowance of fractions of a cent up to the fourth (4) decimal. The case price on the Pricing Schedule in whole amounts are required.
- 3.3. The Contractor agrees that for unit price contracts, prices shall remain firm for 365 days. If the price is increased after 365 days, the unit price may be increased only upon approval of a written request to the Purchasing Agent. Upon receipt of the Contractor's request, the County shall make a determination to approve or adjust the requested price increase based upon its investigations and the information provided by the Contractor. Any price adjustment agreed to shall take place only in accordance with the schedule defined above.
- 3.4. The request for a change in the unit price shall include as a minimum, (1) the cause for the adjustment; (2) proposed effective date; and, (3) the amount of the change requested with documentation to support the requested adjustment (i.e., appropriate Bureau of Labor Statistics index, change in manufacturer's price, etc.)
- 3.5. The request must be received at least 30 days prior to the effective date and shall become effective only upon approval by the County Purchasing Agent. The increased contract unit price shall not apply to orders received by the Contractor prior to the effective date of the approved increased contract unit price. Orders placed via County Purchase Order, shall be considered to have been received by the Contractor after the fifth (5th) calendar day following the date issuance. The County Purchasing Agent may cancel, without liability to either party, any portion of the contract affected by the requested increase and any materials, supplies or services undelivered at the time of such cancellation.
- 3.6. Price decreases shall be made in accordance with paragraph 39 of the General Conditions and Instructions to Bidders.

4. PROJECTED REQUIREMENTS/ESTIMATED QUANTITIES:

- 4.1. Authorized individuals will place orders for specific quantities of items covered in the resultant contract, as requirements arise. Please refer to the paragraph entitled, METHOD OF ORDERING.
- 4.2. The quantities specified in this solicitation are estimates only, and are given for the information of bidders and for the purpose of bid evaluation. They do not indicate the actual quantity that will be ordered since the actual volume will depend upon requirements that develop during the contract period. Waiver of ten percent (10%) limitation in paragraph 27, General Conditions and Instructions to Bidders, is acknowledged.

5. DELIVERY/TIME OF PERFORMANCE:

- 5.1. Fairfax County requires that delivery be made at destination within the shortest time frame possible. Bidders must insert a definitive time frame, IN DAYS, on the Pricing Schedule within which delivery will be made after receipt of order (ARO). Indefinite terms such as

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"promptly," "stock," "without delay," etc., will not be given consideration. **FAILURE TO PROVIDE A DEFINITIVE DELIVERY TIME WILL RESULT IN THE DISQUALIFICATION OF THE BIDDERS' BID IN ITS ENTIRETY OR FOR THE ITEM SPECIFIED.**

- 5.2. FCPS requires that response for service, delivery and labor be made FOB destination within five (5) business days, after receipt of call, for routine calls and forty-eight (48) hours, after receipt of call, for emergency calls.
- 5.3. Deliveries will be made to FCPS Food Service Center at the address below between the hours of 6:00 A.M. and 10:00 A.M. on regular County business days unless other arrangements have been made. Deliver to:

Fairfax County Public Schools
Food Service Center
9515 Main Street
Fairfax, VA 22031
703-764-3580
- 5.4. Product must be on pallets placed on the truck whereas they can be removed with a pallet jack. Exchange pallets will be available.
- 5.5. Pallets shall be packed to reach a height of no more than 4'6" (including pallet) and shall be double wrapped with shrink wrap. Delivery will be refused if single pallets exceed this maximum height.
- 5.6. Pallets may be double stacked as long as the delivery condition of the product is not affected. The Contractor shall place a pallet in between the double stacks.
- 5.7. Pallets shall be braced or otherwise prevented from shifting to prevent damage to the product.
- 5.8. Product on pallets that have become dislodged during shipping may not be accepted. Driver may be required to clear dislodged product from the trailer to allow access to acceptable pallets.
- 5.9. Delivery appointments must be made prior to delivery. Shipments must be coordinated at least 48 hours in advance by calling 703-765-3580. Failure to comply with this requirement may be cause for cancellation of the item from the contract.
- 5.10. Deliveries may be made between the hours of 6:00 A.M. and 10:00 A.M., on mutually agreed upon delivery dates and times.
- 5.11. The County may pick up orders from the vendor when it is in the best interest of the County. In these instances the Contractor shall release the materials only to the designated representatives of the County Agency authorized to place and pick up orders.
- 5.12. The Contractor shall require the end user to sign a delivery receipt at time of delivery. This document will then be filed at the Contractor's business location as a proof of delivery document and supplied to FCPS for verification of invoice.
- 5.13. Inspection and Acceptance of the individual orders will be the responsibility of the Food Service Center Personnel. Contractor Representative shall be available to resolve problems in picking, packing and shipping.

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- 5.14. Contractor is responsible for ensuring that third party freight carriers are qualified to perform transportation services of food related products. Contractor is responsible for ensuring that freight carriers are adequately monitoring and recording temperatures during transportation and that safe sanitation transportation practices are upheld.
- 5.15. As time is of the essence with respect to shipment of products to FCPS Food Service Center, Contractor is responsible for ensuring timely and safe shipment of products to the FCPS Food Service Center. Contractor is responsible for communicating delivery delays and product shortages to the FCPS ordering agent 48 hours in advance of scheduled deliveries. Failure to comply may be cause for termination of the contract.
- 5.16. Contractor assumes responsibility for product damaged during shipment. Any losses sustained during the transportation point of loading to the final destination shall be deducted from the Contractor's invoice.
- 5.17. No substitutions of items, brands, or grades will be made by the Contractor without prior authorization from the Senior Buyer, Food and Nutrition Services. Delivery shortages are required to be communicated 48 hours in advance of delivery to allow time for FCPS to make order adjustments and plan for alternate items.
- 5.18. If a bidder requires a minimum order, it should be indicated on the Pricing Schedule (Appendix B). It is the contractor's responsibility to inform the Office of Food and Nutrition Services when this minimum requirement is not met. A blank line will indicate "no minimum order requirement."

6. PERFORMANCE EVALUATION:

- 6.1. In the event delivery shortages affect the Office of Food and Nutrition Services a reduction rate to the vendor's invoice may be computed as follows:

CRITERIA	PERFORMANCE RATING	FILL RATE PERCENTAGE	INVOICE REDUCTION RATE
Performance meets contractual requirements. Performance elements contain some minor problems for which corrective actions were taken. Minimum number of valid complaints (no more than 5) received within in a 3 month period.	Satisfactory	95% - 100%	None
Performance does not meet contractual and reflect a serious problem for which the Contractor has not identified corrective actions in a timely manner or at all. The performance of the element contain problem(s) for which lacked the contractor's corrective actions or corrective actions were ineffective. Serious problems include but are items that are on the menu, consistent shortages of vending items, delivery of outdated or short dated product.	Unsatisfactory	90% - 94%	5%
		85% - 89%	7%
		84% and Below	10%

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- 6.2. If 10% or more of the total deliveries per month fall in the unsatisfactory performance rating bracket, then further actions may be taken with the final option to terminate the contract for cause.

7. QUOTATION LIMITATION:

- 7.1. Bidders shall offer only ONE ITEM AND PRICE for each line item bid. Line items with multiple offers shall be deemed non-responsive and not considered in the evaluation of bid. No alternatives will be accepted, unless requested by the County. If an "or equal" item is to be bid, the bidder must select the brand and model that meets or exceeds the specified item and submit their bid for that item. A discount price offered for a quantity purchase of the same manufacturer and model would not be considered a limitation; however, only the unit price requested will be considered in award.

8. INTERPRETATION OF BID:

- 8.1. Any questions pertaining to this solicitation shall be directed to:

Lorna Moone, Contract Administrator
 Fairfax County Public Schools
 Office of Procurement Services
 8115 Gatehouse Road, Suite 4400
 Falls Church, Virginia 22042-1203
 Telephone: 571-423-3596
 Email: lmoone@fcps.edu

9. PRODUCT INFORMATION:

- 9.1. The bidder is responsible for clearly and specifically identifying the product being offered and enclosing complete and detailed descriptive literature, catalog cuts and specifications with the bid to enable the County to determine if the product offered meets the requirements of the solicitation. Failure to do so may cause the bid to be considered non-responsive.

10. SAMPLES:

- 10.1. Some items may require a sample prior to the contract award unless the bidder is bidding on the exact item specified in the pricing schedule's item description.
- 10.2. The County Purchasing Agent reserves the right to require a bidder to furnish samples of any item on which they submit a bid within five (5) working days after the request is made.
- 10.3. All samples, if requested, must be furnished free of charge, clearly marked "SAMPLE" with the solicitation number, bid item number, bidder's information, and delivered to:

Fairfax County Public Schools
 Food and Nutrition Services
 Attn: Jeanette Alexander, Senior Buyer
 6840 Industrial Road
 Springfield, Virginia 22151

- 10.4. Samples will be evaluated to determine compliance with all major characteristics of the specified name brand. Failure of samples to conform to all the major characteristics shall cause rejection of the bid for each item that fails to meet the major characteristics.

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- 10.5. Failure to submit a requested sample(s) within five (5) working days after the request is made will be just cause for eliminating the bidder from further consideration for award for that line item.

11. SUBMISSION OF BIDS:

- 11.1. Each bidder must use the attached Pricing Schedule to submit their bid. All bids must show the manufacturer, style/stock number, delivery time, unit price and total price and/or percentage discount for each item for which a bid is submitted, as applicable. **All bidders must return one (1) original (duly marked), two (2) printed copy, and three (3) USB flash drive with the bid in a searchable “pdf” format. A complete bid should have:**

- a. Cover Sheet (DPSM30), duly signed;
- b. Appendix B;
- c. Addenda, if applicable;
- d. Completed W9 Form (must be the latest version, per IRS.gov); and
- e. A notarized statement that the electronic version is a true copy of the original bid.

Failure to provide these items may result in rejection of the bid.

- 11.2. By executing the Cover Sheet, the bidder acknowledges they have read this solicitation, understand it, and agree to be bound by its terms and conditions. Bids may be mailed, or hand delivered to the following location:

Department of Financial Services
Office of Procurement Services
8115 Gatehouse Road, Suite 4400
Falls Church, VA 22042-1203
Telephone: 571-423-3550

- 11.3. All bids shall be submitted in a sealed envelope or package with the bid number, title, and the bidder's name and address on the outside of such envelope or package.
- 11.4. **BIDS RECEIVED AFTER THE DUE DATE/TIME WILL NOT BE CONSIDERED FOR CONTRACT AWARD AND SHALL BE RETURNED TO THE BIDDER.**
- 11.5. Bidders are reminded that changes to the bid, in the form of addenda, are often issued between the issue date and within five (5) days before the due date. All addenda **MUST** be signed and submitted to the Office of Procurement Services, 8115 Gatehouse Road, Suite 4400, Falls Church, VA 22042-1203, before the due date/time or must accompany the bid. Notice of addenda will be posted on eVA and the DPSM current solicitation webpage. Bidders are responsible to monitor the web page for the most current addenda at <http://www.fairfaxcounty.gov/solicitation/>.
- 11.6. Bidders are reminded that any bid submitted shall become available in its entirety to public review upon bid opening.

12. CONTACT FOR ADMINISTRATION:

- 12.1. In the event a contract is executed with your firm as a result of this solicitation please indicate the person(s) we may contact for prompt contract administration, in the space provided on Appendix B.

SPECIAL PROVISIONS**13. BID EVALUATION/CONTRACT AWARD:**

13.1. All items listed in this solicitation will be awarded on the basis of:

- (a) A firm fixed price to the lowest responsive responsible bidder meeting specifications.

13.2. The County reserves the right to award the contract in the aggregate, by line item, by section, or by Manufacturer and to make a Primary and Secondary award, based on the best interest of the County.

14. SHELF LIFE:

14.1. All line Items require a Shelf Life as a factor to be considered and must be indicated on the Pricing Schedule in days. Beside each line item being bid the number of days of shelf life must be notated, to read as follows:

"Product Shelf Life _____ days"
 "Product Shelf Life Refrigerated _____"
 "Product Shelf Life Frozen _____"

14.2. The expiration date of each item having a shelf life factor shall be clearly marked on the package and only fresh manufacturer stock will be accepted.

14.3. Each item must have a shelf life of a minimum of 12 months. Line items without a Shelf Life noted on the Pricing Schedule will not be considered in the evaluation.

15. CONTRACT INSURANCE PROVISIONS

15.1. The Contractor shall be responsible for its work and every part thereof, and for all materials, tools, equipment, appliances, and property of any and all description used in connection therewith. The Contractor assumes all risk of direct and indirect damage or injury to the property or persons used or employed on or in connection with the work contracted for, and of all damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the contract.

15.2. The Contractor shall, during the continuance of all work under the contract maintain the following insurance:

- a. Workers' Compensation and Employer's Liability insurance limits of not less than \$100,000 to protect the contractor from any liability or damages for any injuries (including death and disability) to any and all of its employees, including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia.
- b. Commercial General Liability insurance in the amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate including contractual liability, personal and advertising injury, and products and completed operations coverage. Completed operations liability endorsement shall continue in force for three years following completion of the contract.
- c. Owned, non-owned, and hired Automobile Liability insurance, in the amount of \$1,000,000 per occurrence/aggregate, include property damage, covering all owned,

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non-owned borrowed, leased, or rented vehicles operated by the Contractor. In addition, all mobile equipment used by the Contractor in connection with the contracted work will be insured under a standard Automobile Liability policy, or a Comprehensive General Liability policy. The Garage Keeper's Liability coverage shall also be maintained where appropriate.

- 15.3. Fairfax County Public Schools, the Fairfax County School Board, its officers and employees shall be named as an "additional insured" in the Automobile and General Liability policies and it shall be stated on the Insurance Certificate that this coverage "is primary to all other coverage the County may possess"
- 15.4. Indemnification: Article 57 of the General Conditions and Instruction to Bidders (Appendix A) shall apply.
- 15.5. Additional Requirements
 - a. The Contractor agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A:VI.
 - b. European markets including those based in London, and the domestic surplus lines markets that operate on a non-admitted basis are exempt from the requirement provided that the contractor's broker can provide financial data to establish that a market is equal to or exceeds the financial strengths associated with the A.M. Best's rating of A:VI or better.
 - c. Liability insurance may be arranged by General Liability and Automobile Liability policies for the full limits required, or by a combination of underlying Liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.
 - d. The contractor will provide an original, signed Certificate of Insurance citing the contract number and such endorsements as prescribed herein.
 - e. The contractor will secure and maintain all insurance certificates of its subcontractors, which shall be made available to FCPS on demand.
 - f. The contractor will provide on demand certified copies of all insurance policies related to the contract within ten business days of demand by the FCPS. These certified copies will be sent to the FCPS from the contractor's insurance agent or representative.
 1. No change, cancellation, or non-renewal shall be made in any insurance coverage without a 45 day written notice to the FCPS. The contractor shall furnish a new certificate prior to any change or cancellation date. The failure of the contractor to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished.
 2. Compliance by the contractor and all subcontractors with the foregoing requirements as to carrying insurance shall not relieve the contractor and all subcontractors of their liabilities provisions of the contract.
 3. Contractual and other liability insurance provided under this contract shall not contain a supervision, inspection or engineering services exclusion that would preclude the County from supervising and/or inspecting the project as to the end result. The contractor shall assume all on-the-job responsibilities as to the control

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of persons directly employed by it and of the subcontractors.

4. Nothing contained in the specifications shall be construed as creating any contractual relationship between any subcontractor and the FCPS. The Contractor shall be as fully responsible to the FCPS for the acts and omissions of the subcontractors and of persons employed by them as it is for acts and omissions of person directly employed by it.
5. Precaution shall be exercised at all times for the protection of persons (including employees) and property.
6. The Contractor and all subcontractors are to comply with the Occupational Safety and Health Act of 1970, Public Law 91-596, as it may apply to this Contract.
7. If the Contractor delivers services from a County leased facility, the Contractor is required to carry property insurance on all equipment, to include County owned installed and maintained equipment used by the Contractor while in their care, custody and control for use under this contract.

g. Liability Insurance "Claims Made" basis:

If the liability insurance purchased by the contractor has been issued on a "claims made" basis, the contractor must comply with the following additional conditions. The limit of liability and the extensions to be included as described previously in these provisions, remain the same. The Contractor must either:

1. Agree to provide certificates of insurance evidencing the above coverage for a period of two years after final payment for the contract. This certificate shall evidence a "retroactive date" no later than the beginning of the Contractor's or sub-contractor's work under this contract, or
2. Purchase the extended reporting period endorsement for the policy or policies in force during the term of this contract and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself.

16. METHOD OF ORDERING:

- 16.1. The County may use two (2) different methods of placing orders from the final contract: Purchase Orders (PO's) and approved County procurement cards. The method of payment is at the discretion of the County at no additional surcharges will be accepted for the use of the procurement card.
- 16.2. A Purchase Order (PO) may be issued to the Contractor on behalf of the County agency ordering the items/services covered under this contract. An issued PO will become part of the resulting contract. The purchase order indicates that sufficient funds have been obligated as required by Title 15.2-1238 of the Code of the Commonwealth of Virginia.
- 16.3. Procurement Card orders and payments may also be made by the use of a Fairfax County or Fairfax County Public Schools "Procurement" Card. The Procurement card is currently a MasterCard. Contractors are encouraged to accept this method of receiving orders.
- 16.4. Regardless of the method of ordering used, solely the contract and any modification

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determine performance time and dates.

- 16.5. Performance under this contract is not to begin until receipt of the purchase order, Procurement Card order, or other notification to proceed by the County Purchasing Agent and/or County agency to proceed. Purchase requisitions shall not be used for placing orders.

17. CORRESPONDENCE:

- 17.1. All communications between the parties relating to material contractual issues shall be through the Contract Administrator and must be in writing to be deemed binding.

18. ADDITIONS/DELETIONS:

- 18.1. The County reserves the right to add similar items/services or delete items/services specified in the resultant contract as requirements change during the period of the contract. Fairfax County and the Contractor will mutually agree to prices for items/services to be added to the contract. Contract amendments will be issued for all additions or deletions.

19. CANCELLATION OF ORDERS:

- 19.1. Purchases made under this contract are for readily available supplies. Time is of the essence in furnishing the items ordered. The County reserves the right to cancel the order and/or to refuse delivery if the items ordered are not furnished within the period of time specified in this contract.

20. EMERGENCY PURCHASES:

- 20.1. Should the Contractor be unable to furnish the required item within the period of time specified in the contract the County reserves the right to make emergency purchases from other sources.

21. SALES/DELIVERY TICKETS:

- 21.1. Orders placed under this contract for delivery placed by PO, Procurement Card or for pick up by an authorized representative, shall be supported by the Contractor's Sales/Delivery Ticket. The Contractor's Sales/Delivery Ticket shall contain the following information:

1. Contractor's Name
2. Purchase Order number
3. Date of Purchase
4. Itemized list of supplies furnished
5. Quantity, unit price and extension of each item, and total, less any applicable trade discount in accordance with the Contract.
6. Name of authorized representative ordering the supplies
7. Name of Agency receiving the supplies.

- 21.2. In all instances, the Contractor will prepare a Sales/Delivery Ticket, whether delivery is made by the Contractor or pick up is made by a FCPS representative at the Contractor's place of business. The Contractor's Sales/Delivery Ticket will be signed, by the FCPS representative, with a copy being retained by the Contractor.

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22.1. The Contractor shall submit an invoice for each delivery within 7 to 10 days to:

Fairfax County Public Schools
The Office of Food and Nutrition Services
Attn: Accounts Payable
6840 Industrial Road
Springfield, VA 22151

22.2. The invoice must be accompanied by one copy of each signed Sales/Delivery Ticket.

22.3. The invoice shall contain the applicable Purchase Order number and the name of the Agency receiving the supplies.

22.4. The Contractor shall submit a cumulative usage report each month detailed by item breakdown, reporting on current usage, year-to-date usage, per item price, and extended dollar value for all orders and deliveries for each month. A usage report is required to be submitted no later than the 15th of the following month.

23. ORDER OF PRECEDENCE:

23.1. In the event of conflict, the Acceptance Agreement and the Special Provisions of this solicitation shall take precedence over the General Conditions and Instructions to Bidders or any other contract document.

24. AUDIT:

24.1. The Contractor shall retain all books, records, and other documents relative to this contract for three (3) years after final payment, or until audited by the County of Fairfax, whichever is sooner. The County shall have full access to and the right to examine any of said materials during the retention period.

25. SUBCONTRACTING:

25.1. If one or more subcontractors are required, the Contractor is encouraged to utilize small, minority-owned, and women-owned business enterprises. For assistance in finding subcontractors, contact the Virginia Department of Business Assistance <http://www.dba.state.va.us>; the Virginia Department of Minority Business Enterprise <http://www.dmb.e.state.va.us>; local chambers of commerce and other business organizations.

25.2. As part of the contract award, the prime Contractor agrees to provide the names and addresses of each subcontractor, that subcontractor's status as defined by Fairfax County, as a small, minority-owned and/or woman-owned business, and the type and dollar value of the subcontracted goods/services provided. Reference Appendix B to this solicitation.

26. USE OF CONTRACT BY OTHER PUBLIC BODIES:

26.1. Reference Paragraph 70, General Conditions and Instructions to Bidders, Cooperative Purchasing: Bidders are advised that the resultant contract(s) may be extended, with the authorization of the Bidder, to other public bodies, or public agencies or institutions of the United States to permit their use of the contract at the same prices and/or discounts and terms and conditions of the resulting contract. If any other public body decides to use the

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final contract, the Contractor(s) must deal directly with that public body concerning the placement of orders, issuance of the purchase orders, contractual disputes, invoicing and payment. The County of Fairfax acts only as the "Contracting Agent" for these public bodies. Failure to extend a contract to any public body will have no effect on consideration of your bid. (See Appendix B for sample listing).

- 26.2. It is the Contractors responsibility to notify the public body(s) of the availability of the contract(s).
- 26.3. Other public bodies desiring to use this contract must make their own legal determination as to whether the use of this contract is consistent with their laws, regulations, and other policies.
- 26.4. Each public body has the option of executing a separate contract with the Contractor(s). Public bodies may add terms and conditions required by statute, ordinances, and regulations, to the extent that they do not conflict with the contract's terms and conditions. If, when preparing such a contract, the general terms and conditions of a public body are unacceptable to the Contractor, the Contractor may withdraw its extension of the award to that public body.
- 26.5. Fairfax County shall not be held liable for any costs or damages incurred by another public body as a result of any award extended to that public body by the Contractor.

27. NEWS RELEASES BY VENDORS:

- 27.1. As a matter of policy, the County does not endorse the products or services of a Contractor. A Contractor will not make news releases concerning any resultant contract from this solicitation without the prior written approval of the County. All proposed news releases will be routed to the Purchasing Agent for review and approval.

28. AMERICANS WITH DISABILITIES ACT REQUIREMENTS:

- 28.1. Fairfax County is committed to a policy of nondiscrimination in all County programs, services, and activities and will provide reasonable accommodations upon request. Bidders requesting special accommodations should call the Office of Equity and Employee Relations at 571-423-3070, HRequity&empolyeerelations@fcps.edu or TRS at 711. Please allow seven (7) working days in advance of the event to make the necessary arrangements.
- 28.2. Fairfax County Government is fully committed to the Americans with Disabilities Act (ADA), which guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and all County programs, activities and services. Fairfax County government Contractors, subcontractors, vendors, and/or suppliers are subject to this ADA policy. All individuals having any County contractual agreement must make the same commitment. Your acceptance of this contract acknowledges your commitment and compliance with ADA.

29. HIPAA COMPLIANCE:

- 29.1. Fairfax County Government has designated certain health care components as covered by the Health Insurance Portability and Accountability Act of 1996. The successful vendor will be designated a business associate pursuant to 45 CFR part 164.504(e) of those agencies identified as health care components of the County, including the Fairfax-Falls Church Community Services Board, upon award of contract. The successful vendor shall

SPECIAL PROVISIONS

be required to execute a Fairfax County Business Associate Agreement and must adhere to all relevant federal, state, and local confidentiality and privacy laws, regulations, and contractual provisions of that agreement. These laws and regulations include, but are not limited to: (1) HIPAA – 42 USC 201, et seq., and 45 CFR Parts 160 and 164; and (2) Va Code – Title 32.1, Health, § 32.1-1 et seq. The vendor shall have in place appropriate administrative, technical, and physical safeguards to ensure the privacy and confidentiality of protected health information.

- 29.2. Further information regarding HIPAA Compliance is available on the County's website at <http://www.fairfaxcounty.gov/HIPAA>.

30. STATE CORPORATION COMMISSION IDENTIFICATION NUMBER:

- 30.1. Pursuant to *Code of Virginia*, §2.2-4311.2 subsection B, a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 is required to include in its bid or proposal the identification number issued to it by the State Corporation Commission (SCC). Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law is required to include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized. Any bidder or offeror that fails to provide the required information may not receive an award.

31. BACKGROUND CRIMINAL INVESTIGATION/IDENTIFICATION:

- 31.1. By the signature of its authorized official on the response to this solicitation, the Contractor certifies that neither the contracting official nor any of the Contractor's employees, agents or subcontractors who will have direct contact with students has been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child. The Contractor agrees to remove from the contract any employee, agent or subcontractor who has been determined by the School Board to be disqualified from service due to such convictions or the failure to truthfully report such convictions.
- 31.2. The Contractor shall immediately notify the FCPS contract administrator if any Contractor or employee of said Contractor providing services under the contract is arrested or indicted as a defendant in Virginia or any other jurisdiction. FCPS reserves the right to require that the employee be suspended from working on the contract until the charge(s) is adjudicated. This requirement does not apply to minor traffic violations, not requiring the appearance of the employee in court, unless the charge includes the illegal possession, distribution, use or influence of drugs or alcohol.
- 31.3. Due to enhanced security measures, Contractor employees/representatives are required to have photo identification and be able to present same upon request. Contractor employees/representatives shall report to the appropriate administrative and/or main office each time a site is visited. **All Contractor employees will be required to wear a company picture ID badge, or temporary name tag, issued by the County, clearly visible above the waist.** Contractor employees/representatives who arrive at the County/School facility without appropriate identification badges will immediately be dismissed from the job site.
- 31.4. Failure to comply with the above requirements may result in termination of the contract.

TECHNICAL SPECIFICATIONS**1. NUTRITIONAL ANALYSIS:**

- 1.1 Bidders shall complete and submit **with their bid** the following information for each line item.
- 1.2 Nutritional Information – must be based on portion size and not grams, or any other unit of measure calculations.

Portion – must be in accordance with the portion requirements on the Pricing Schedule (Appendix B).

Child Nutrition Label – attach a copy of the Child Nutrition Label. If an item does not have a CN label, the bidders shall provide a statement on company letterhead, with the date, and signed by a company official verifying that the meal contribution, in accordance with current USDA child nutrition requirements, is correct. Since grain items alone are not under CN labeling requirements, all bread items such as bagels, muffins, crackers, etc. are required to have a letter providing the contribution per serving.

Ingredient Information – Bidders shall provide one legible copy of nutritional analysis and ingredient listings for each bided line item and abide by the Food Allergen Labeling and Protection Act of 2004 (FALCPA). Nutritional facts must include calories, calories from fat, total fat with saturated fat and trans-fat, cholesterol, sodium, total carbohydrate with dietary fiber, sugars, and protein, Vitamin A, Vitamin C, Calcium and Iron. Additional information may be requested for Vitamin D and Potassium.

If gelatin is on the ingredient list, state the source whether it be beef, pork, vegetable, etc.

If natural flavors are an ingredient, provide the derivative.

State if the product is gluten free.

Note: FCPS Food and Nutrition Services requires that the following ingredients not be included in products. See Pricing Schedule (Appendix B) for details. Any received bids for noted line items with excluded ingredients will be deemed nonresponsive.

1. Artificial Flavors
2. Red 40 Colorant
3. Yellow 5 & 6 Colorant
4. Blue Colorant
5. BHA
6. BHT
7. TBHQ
8. MSG
9. HFCS
10. Potassium Bromate
11. Sodium Benzoate.
12. Azodicarbonamide
13. BVO – Brominated Vegetable Oil
14. Sodium Nitrite/Sodium Nitrate
15. Mycoprotein
16. Sulfites/SO₂, Sulfur dioxide, sodium sulfite
17. Artificial Sweetener – Acesulfame-K, Aspartame, Saccharin, Sucralose
18. Caffeine

TECHNICAL SPECIFICATIONS

19. Partially hydrogenated oils.

Any new information acquired on questionable ingredients such as azodicarbonamide found in breads may institute an inquiry about the removal of that particular ingredient.

Beef – All beef products shall be made without the use of lean finely textured beef (LFTB). Also prohibited is the use of beef from herds fed Zilmax.

Chicken – Manufacturers shall not provide chicken that has been sent to China for processing. Manufacturers must provide evidence that all processing was done in the U.S.A.

Fish - Products shall not contain sodium tripoly phosphate (STPP).

Product Identification – Each bided line item must show brand name, product code, bidder code, case pack, and portions per case.

Cooking Instructions – Food and Nutrition Services uses a variety of equipment for cooking which include but not limited to steamers, combi/convection ovens, and steam jacket kettles. Bidders shall provide cooking instructions incorporating these types of equipment.

Package Shelf Life Code – a full explanation of expiration date code must be given, stating “use by”, “sell by”, “best before”, etc.

- 1.3 The Contractor shall provide the Office of Food and Nutrition Services formal written notice of any of the following actions during the contract period.
 - Any product substitution;
 - Change of plant/facility;
 - Product is altered in any way;
 - Product packaging is changed.
- 1.4 Substitution of awarded items are allowed only upon approval from the Office of Food and Nutrition Services as prescribed in Special Provisions 5, Paragraph 5.17.
- 1.5 After award, samples of substituted items must meet all requirements specified in the Pricing Schedule, Appendix B and submitted to the Senior Buyer of Food and Nutrition Services for approval.

2. FOOD LAWS AND STANDARDS:

- 2.1 All products shall be processed, packaged and delivered in accordance with the Virginia Health Department, U.S. Department of Agriculture regulations, and the Federal Food, Drug, and Cosmetic Act requirements and regulations promulgated thereunder. .
- 2.2 Whole Grains – All products shall be whole grain rich.
- 2.3 Frozen high protein products must have low pathogen levels and be free of bacterial contamination.
- 2.4 All products must pass through metal detectors assuring they are free of metal and other foreign objects. Contact Information Form, Section 12 (Attachment 5).

TECHNICAL SPECIFICATIONS

- 2.5 Produce must not contain pesticides in excess of tolerance limits established by FDA, EPA and USDA.
- 2.6 All a la carte items must meet the Smart Snacks in Schools criteria. All items will be run through the Smart Snack calculator found at <https://foodplanner.healthiergeneration.org/calculator/>
- 2.7 FCPS Food and Nutrition Services, requires manufacturers to follow the Hazard Analysis Critical Control Point (HACCP) system. Bidders shall insert information where required in the space provided on the Pricing Schedule (Appendix B).
- 2.8 All bids must meet Technical Provisions 2, Food Laws and Standard if not, the bid will be deemed nonresponsive. (Attachment 5).

3. COMMUNICATION OF FOOD RECALLS

- 3.1 The Contractor shall have a process in place to effectively respond to food recalls. The process shall include accurate and timely notification to FCPS Food and Nutrition Services and assurance that recalled products are identified and removed from school sites in the most expedient manner.
- 3.2 The Contractor shall either issue a credit or deliver a comparable substitute at FCPS' discretion.
- 3.3 All costs associated with the product recall, which include but are not limited to transportation and handling costs, shall be borne by the contractor.
- 3.4 Food and Nutrition Services will follow similar procedures for recalls of USDA Foods. For more information refer to "Responding to a Food Recall:

https://fns-prod.azureedge.net/sites/default/files/Responding_Food_Recall_FNS_Final_May_30_2014.pdf

4. MANUFACTURER'S PRODUCT CODE:

- 4.1 State where indicated in the Pricing Schedule if the manufacturer's code is one of the following: (Reference: Appendix B, Pricing Schedule).
 - a. Sell-by or pull-by date;
 - b. Use-by date;
 - c. Expiration date;
 - d. Best-by date;
 - e. Pack date – must state how long product is good for from pack date.

5. INSPECTION:

- 5.1 An authorized representative of the County of Fairfax or the Commonwealth of Virginia shall have the right to inspect the premises, facilities, and processing methods for producing items covered by this contract. Standard tests may be made for any items delivered for ensuring satisfactory contractor performance.
- 5.2 All items covered by this contract shall be packaged and labeled in accordance with accepted trade practices in sturdy and clean containers.

TECHNICAL SPECIFICATIONS

- 5.3 All items delivered must be in strict accordance with the specifications contained herein and will be subject to tests by the Food and Nutrition Services staff, and the Virginia Department of Health, conducted on a random sampling basis during the life of the contract.

6. COMMODITY DISTRIBUTION REFORM ACT:

- 6.1 The Commodity Distribution Reform Act of 1987 and the Commodity Letter-of-Credit requires schools to buy only domestically grown and packed products where feasible.
- 6.2 Exemption for products not commercially produced in the United States has been granted for spices, bananas, cocoa, tea, coffee, and certain ethnic specialty foods.
- 6.3 To assure the use of domestic products, a certification form indicating that the product is domestically grown and produced signed by the manufacturing company's president or his designee shall be provided with the bid. For items added on the contract after award, the certification form shall be provided within three business days after the request is made. Failure to provide the requested certification may be cause for eliminating the bidder from consideration for award for that item. The contractor certifying that the product is domestically grown and produced will update the form annually. (Attachment 2)

7. QUALITY TESTING:

- 7.1 An impartial panel will test samples that are requested for quality testing, this panel shall be composed of the supervisory personnel of the Office of Food and Nutrition Services, students and cafeteria managers. Prior to the test, all marks of product identification, labeling, etc., will be removed and each sample product will be designated by number only. The sample product will be reviewed for flavor, quality and nutritive content to meet the major characteristics specified.

8. PROMOTIONAL OFFERS:

- 8.1 Promotional programs normally offered to customers of the successful contract shall be extended to Fairfax County Office of Food and Nutrition Services.
- 8.2 Promotional offers may include, but not be limited to, point of sale advertising displays, posters, and other marketing incentive materials. Bidders shall provide information about promotional incentives offered by their companies with their bid.

9. DELIVERY VEHICLES:

- 9.1 All products specified herein shall be delivered in vehicles that are maintained in a sanitary condition and properly refrigerated such that product maintains a frozen state. Thawed products shall not be accepted. Frozen products shall be maintained at a temperature that shall not exceed 32 degrees Fahrenheit at all times while in storage and during transportation.
- 9.2 Delivery vehicles must be equipped with back up alarms to help prevent accidents. Contract Information Form, Section 11 (Attachment 5). Please specify if vehicles are equipped with back up alarms. Periodic inspections will be made by Food and Nutrition personnel to confirm alarms. Failure to have back up alarms shall cause the bid to be considered non-responsive.

TECHNICAL SPECIFICATIONS**10. USE OF BONUS USDA COMMODITIES (if applicable):**

- 10.1 Food and Nutrition Services prefers that the processing companies for the products in this solicitation be on the current approved list of processors with the Virginia Department of Agriculture or United States Department of Agriculture. Information concerning the use of commodity items under the Virginia Department of Agriculture may be obtained by calling or writing the following:

Mr. Tom Moore, Regional Commodity Manager
Food Distribution Services
Virginia Department of Agriculture and Commerce
P. O. Box 1163
Richmond, VA 23218
Telephone: 804-786-0314

- 10.2 Bidders should indicate on the Contact Information Form, Section 14, if their company participates in commodity processing and will obtain a commodity contract.

- 10.3 A contract with the Virginia Department of Agriculture or United States Department of Agriculture for use of commodities should be completed and approved by the Virginia Department of Agriculture within 14 days of notifications of availability of bonus commodity product. A copy of the contract should be sent to the following:

Director, Food and Nutrition Services
Fairfax County Public Schools
6840 Industrial Rd.
Springfield, VA 22151

COUNTY OF FAIRFAX

COMMONWEALTH OF VIRGINIA

GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS

BIDS ON SOLICITATIONS ISSUED BY THE COUNTY WILL BIND BIDDERS TO THE APPLICABLE CONDITIONS AND REQUIREMENTS IN THE GENERAL CONDITIONS AND INSTRUCTIONS TO BIDDERS (GCIB) UNLESS OTHERWISE SPECIFIED IN THE SOLICITATION AND SUBJECT TO APPLICABLE STATE, LOCAL, AND FEDERAL LAWS.

BIDDERS OR THEIR AUTHORIZED REPRESENTATIVES SHOULD INFORM THEMSELVES FULLY AS TO THE CONDITIONS, REQUIREMENTS, AND SPECIFICATIONS OF EACH COUNTY PROCUREMENT BEFORE SUBMITTING BIDS. FAILURE TO DO SO WILL BE AT THE BIDDER'S OWN RISK AND RELIEF CANNOT BE SECURED ON THE PLEA OF ERROR.

1. **AUTHORITY:** The Purchasing Agent has the sole responsibility and authority for purchasing supplies, materials, equipment, and services, except as excluded in the Fairfax County Purchasing Resolution. The Purchasing Agent's responsibility and authority includes, but is not limited to, issuing and modifying solicitations, negotiating and executing contracts, and placing purchase orders. In discharging these responsibilities, the Purchasing Agent may be assisted by contract specialists. Unless specifically delegated by the Purchasing Agent, no other County officer or employee is authorized to order supplies or services, enter into purchase negotiations or contracts, or in any way obligate the government of the County of Fairfax for an indebtedness. Any purchase ordered or contract made that is contrary to these provisions and authorities shall be of no effect, void, and does not bind the County.
2. **DEFINITIONS:** Unless otherwise defined in the GCIB, capitalized terms shall have the meanings defined by the Fairfax County Purchasing Resolution.

AGENCY: Any Department, Agency, Authority, Commission, Board or other unit in the Administrative Service of the County.

BID: The offer of a bidder to provide specific goods or services at specified prices and/or other conditions specified in the solicitation.

BIDDER/OFFEROR: Any individual, company, firm, corporation, partnership or other organization bidding on solicitations issued by the Purchasing Agent and offering to enter into contracts with the County. The term "bidder" will be used throughout this document and shall be construed to mean "offeror" where appropriate.

CONTRACTOR: Any individual, company, firm, corporation, partnership or other organization to whom an award is made by the County.

INVITATION FOR BID (IFB): A request which is made to prospective suppliers (bidders) for their quotation on goods or services desired by the County. The issuance of an IFB will contain or incorporate by reference the specifications and contractual terms and conditions applicable to the procurement.

PURCHASING AGENT: The Purchasing Agent employed by the Board of Supervisors of Fairfax County, Virginia.

REQUEST FOR PROPOSAL (RFP): A request for an offer from prospective offerors which will indicate the general terms which are sought to be procured from the offeror. The RFP will specify the evaluation factors to be used and will contain or incorporate by reference other contractual terms and conditions applicable to the procurement.

SOLICITATION: The process of notifying prospective bidders that the County wishes to receive bids on a set of requirements to provide goods or services. The notification of County requirements may consist of public advertising (newspaper, County Web Site, or other electronic notification), the mailing of Notices of Solicitation, Invitation for Bid (IFB) or Request for Proposal (RFP), the public posting of notices, issuance of an informal solicitation to include telephone calls to prospective bidders.

CONDITIONS OF BIDDING

3. **BID FORMS:** Unless otherwise specified in the solicitation, all bids must be (i) submitted on the forms provided by the County, including the bid Cover Sheet and Pricing Schedule(s); (ii) properly signed in ink in the identified spaces; and (iii) submitted in a sealed envelope or package.

If the bid prices or any other submissions differ on the copy of the submitted bid, the ORIGINAL copy shall prevail.

4. **LATE BIDS & MODIFICATIONS OF BIDS:**

- a. Bids or proposals received after the date and time specified for receipt in the solicitation will not be considered.

- b. **If an emergency, unanticipated event, or closing of County offices interrupts or suspends normal County business operations so that bids cannot be received at the County office designated for receipt of bids by the exact time specified in the solicitation, then bids will be due at the same time of day specified in the solicitation on the first work day that normal County business operations resume.**
- c. The official time used for receipt of bids/modifications is the time and date stamp clock located in the Department of Procurement & Material Management. No other clocks, calendars or timepieces are recognized. All bidders must ensure all bids/modifications are received prior to the scheduled due date/time.
5. **WITHDRAWAL OF BIDS:** Bids shall be withdrawn only as set forth in the Fairfax County Purchasing Resolution.
6. **ERRORS IN BIDS:** When an error is made in extending total prices, the unit bid price will govern. Erasures in bids must be initialed by the bidder. Bidders are cautioned to recheck their bids for possible error. Errors discovered after public opening cannot be corrected and the bidder will be required to perform if its bid is accepted.
7. **LABELING OF BIDS:** All bids and proposals submitted in response to a County solicitation must be submitted in a sealed envelope or package identified with the solicitation number, title, and bidder's name and address clearly marked on the outside of the envelope or package.
8. **ACCEPTANCE OF BIDS/BINDING 90 DAYS:** Unless otherwise specified, all formal bids submitted shall be binding for ninety (90) calendar days following bid opening date, unless extended by mutual consent of all parties.
9. **CONDITIONAL BIDS:** Conditional bids may be rejected in whole or in part.
10. **BIDS FOR ALL OR PART:** The Purchasing Agent reserves the right to make award on all items in the aggregate or on any of the items on an individual basis, whichever is in the best interest of the County. A bidder may restrict its bid to consideration in the group aggregate by so stating, but must name a single unit price on each item bid. Any bid in which the bidder names a total price for all the articles without quoting a unit price for each and every separate item may not be considered for award.
11. **AREA BIDS:** For the purchase and delivery of certain goods and services the County may be divided into Areas (e.g., Areas I, II, III, and IV). When such goods and services are included in the Pricing Schedule, bidders may bid on all areas or an individual area. A map showing the areas of the County will be furnished with the solicitation when required.
12. **RECEIPT OF BIDS:** Bids received prior to the time of opening will be securely kept, unopened by the County. No responsibility will attach to the Purchasing Agent or her representative for the premature opening of a bid not properly addressed and identified. Unless specifically authorized in the solicitation, telegraphic, electronic, or facsimile bids/modifications will not be considered by the County.
13. **BID OPENING:** All bids received in response to an Invitation for Bid (IFB) will be opened at the date, time and place specified, read publicly, and made available for inspection as provided in paragraph 63, General Conditions and Instructions to Bidders. The Purchasing Agent's representative assigned to open the bids will decide when the specified time for bid opening has arrived. Tabulations of bids received are posted on the County's website at: <http://www.fairfaxcounty.gov/procurement/bid-tab>
- Proposals received in response to a Request for Proposal (RFP) will be made available as provided in Paragraph 63, General Conditions and Instructions to Bidders.
14. **OMISSIONS & DISCREPANCIES:** Any items or parts of any equipment listed in this solicitation that clearly necessary for the operation and completion of such equipment, but are: (i) not fully described by the County; or (ii) are omitted by the County from such specification, shall be considered a part of such equipment even if not directly specified or called for in the specifications.
- If a bidder finds discrepancies or ambiguities in, or omissions from, the solicitation, including the drawings and/or specifications, it shall notify the Purchasing Agent at least five (5) days prior to the date set for the opening of bids. If necessary, the Purchasing Agent will send a written addendum for clarification to all bidders no later than three (3) days before the date set for opening of bids. Notifications regarding specifications will not be considered if received within five days of the date set for opening of bids.
15. **BIDDER INTERESTED IN MORE THAN ONE BID:** If more than one bid is offered by a bidder, directly or indirectly, all such bids may be rejected. A bidder who has quoted prices on work, materials, or supplies to a bidder is not disqualified from quoting prices to other bidders or firms submitting a bid directly for the work, materials or supplies.
16. **TAX EXEMPTION:** The County is exempt from the payment of any federal excise or any Virginia sales tax. Fairfax County's Federal Excise Tax Exemption Number is 54-74-0127K.
17. **PROHIBITION AGAINST UNIFORM PRICING:** The Purchasing Agent encourages open and competitive bidding by all

possible means and endeavors to obtain the maximum degree of open competition on all purchase transactions using the methods of procurement authorized by the Fairfax County Purchasing Resolution. Each bidder, by virtue of submitting a bid, guarantees that it has not been a party with other bidders to an agreement to bid a fixed or uniform price. Violation of this implied guarantee shall render void the bids of participating bidders. Any disclosure to or acquisition by a competitive bidder, in advance of the opening of the bids, of the terms or conditions of the bid submitted by another competitor may render the entire proceedings void and may require re-advertising for bids.

SPECIFICATIONS

18. **CLARIFICATION OF TERMS:** If any prospective bidder has questions about the specifications or other solicitation documents, the prospective bidder should contact the contract specialist whose name appears on the face of the solicitation no later than five working dates before the due date. Any revisions to the solicitation will be made only by addendum issued by the contract specialist.
19. **BRAND NAME OR EQUAL ITEMS:** Unless otherwise provided in the Invitation for Bid, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named; it conveys the general style, type, character, and quality of the article desired. Any article that the County in its sole discretion determines to be the equivalent of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The bidder is responsible for clearly and specifically identifying the product being offered and providing sufficient descriptive literature, catalog cuts and technical detail to enable the County to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make, or manufacturer specified. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the bidder clearly indicates in its bid that the product is an equivalent product, such bid will be considered to offer the brand name product referenced in the solicitation.
20. **SPECIFICATIONS:** When a solicitation contains a specification that states no substitutes, no deviation therefrom will be permitted and the bidder will be required to furnish articles in conformity with that specification.

The bidder must abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully complete every part as the true intent and meaning of the specifications and drawings. Whenever the mention is made of any articles, material, or workmanship to be in accordance with laws, ordinances, building codes, underwriter's codes, A.S.T.M. regulations or similar expressions, the requirements of these laws, ordinances, etc., shall be construed as to the minimum requirements of these specifications.

AWARD

21. **AWARD OR REJECTION OF BIDS:** The Purchasing Agent shall award the contract to the lowest responsive and responsible bidder complying with all provisions of the IFB, provided the bid price is reasonable and it is in the best interest of the County to accept it. Awards made in response to a RFP will be made to the highest qualified offeror whose proposal is determined, in writing, to be the most advantageous to the County taking into consideration the evaluation factors set forth in the RFP. The Purchasing Agent reserves the right to award a contract by individual items, in the aggregate, or in combination thereof, or to reject any or all bids and to waive any informality in bids received whenever such rejection or waiver is in the best interest of the County. Award may be made to as many bidders as deemed necessary to fulfill the anticipated requirements of Fairfax County. The Purchasing Agent also reserves the right to reject the bid of a bidder deemed to be a non-responsible bidder.

In determining the responsibility of a bidder, the following criteria will be considered:

- a. The ability, capacity and skill of the bidder to perform the contract or provide the service required;
 - b. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
 - c. The character, integrity, reputation, judgment, experience and efficiency of the bidder;
 - d. The quality of performance of previous contracts or services;
 - e. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or services;
 - f. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
 - g. The quality, availability and adaptability of the goods or services to the particular use required;
 - h. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;
 - i. Whether the bidder is in arrears to the County on debt or contract or is a defaulter on surety to the County or whether the bidder's County taxes or assessments are delinquent; and
 - j. Such other information as may be secured by the Purchasing Agent having a bearing on the decision to award the contract. If an apparent low bidder is not awarded a contract for reasons of non-responsibility, the Purchasing Agent shall so notify that bidder and shall have recorded the reasons in the contract file.
22. **NOTICE OF ACCEPTANCE/CONTRACT DOCUMENTS:** A written award (or Acceptance Agreement) mailed or otherwise furnished to the successful bidder within the time for acceptance specified in the solicitation shall result in a binding contract. The following documents, which are included in the solicitation, are incorporated by reference in and made part of the resulting contract:

- a. County of Fairfax Solicitation Form (Cover Sheet) and other documents which may be incorporated by reference, if applicable
- b. Acceptance Agreement
- c. General Conditions and Instructions to Bidders
- d. Special Provisions and Specifications
- e. Pricing Schedule
- f. Any Addenda/Amendments/Memoranda of Negotiations

23. **TIE-BIDS:** If all bids are for the same total amount or unit price (including authorized discounts and delivery times), and if the public interest will not permit the delay of re-advertisement for bids, the Purchasing Agent is authorized to award the contract to the tie bidder that has its principal place of business in the County, or if there be none, to the resident Virginia tie bidder, or if there be none, to one of the tie bidders by drawing lots in public; or the Purchasing Agent may purchase the goods or services in the open market except that the price paid shall not exceed the lowest contract bid price submitted for the same goods or services. The decision of the County to make award to one or more such bidders shall be final.

24. **PROMPT PAYMENT DISCOUNT:**

- a. Unless otherwise specified in the solicitation, prompt payment discounts requiring payment in less than fifteen (15) days will not be considered in evaluating a bid for award. However, even though not considered in the evaluation, such discounts will be taken if payment is to be made within the discount period.
- b. If a discount for prompt payment is allowed, the discount period will begin on the date of receipt of a properly completed invoice or acceptance of materials or services, whichever is later.
- c. For determining acceptance of supplies in accordance with the provisions of the prompt payment discount paragraph, inspection and acceptance shall be accomplished only after examination (including testing) of supplies and services to determine whether the supplies and services conform to the contract requirements.

For the purpose of earning the discount, payment is deemed to be made as of the date of mailing of the County check or issuance of an Electronic Funds Transfer, or completion of a credit card transaction.

25. **INSPECTION-ACCEPTANCE:** Acceptance shall occur only after receipt and inspection provided such inspection, as appropriate, is accomplished within a reasonable time. The County reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.
26. **DEFINITE BID QUANTITIES:** Where definite quantities are specifically stated, acceptance will bind the County to order quantities specified and to pay for, at contract prices, all such supplies or services delivered that meet specifications and conditions of the contract. However, the County will not be required to accept delivery of any balances unordered, as of the contract expiration date, unless the Contractor furnished the Purchasing Agent with a statement of unordered balances not later than ten (10) days after the termination date of the contract.
27. **REQUIREMENT BID QUANTITIES:** On "Requirement" bids, acceptance will bind the County to pay for, at unit bid prices, only quantities ordered and delivered. Where the County specifies estimated quantities, the Contractor shall not be required to deliver more than ten (10) percent in excess of the estimated quantity of each item, unless otherwise agreed upon.

CONTRACT PROVISIONS

28. **TERMINATION OF CONTRACTS:** Contracts will remain in force for full periods specified and/or until all articles ordered before date of termination shall have been satisfactorily delivered and accepted and thereafter until all requirements and conditions shall have been met, unless:
- a. Terminated prior to expiration date by satisfactory deliveries of entire contract requirements, or upon termination by the County for Convenience or Cause.
 - b. Extended upon written authorization of the Purchasing Agent and accepted by Contractor, to permit ordering of unordered balances or additional quantities at contract prices and in accordance with contract terms.
29. **TERMINATION FOR CONVENIENCE:** A contract may be terminated in whole or in part by the County in accordance with this clause whenever the Purchasing Agent determines that such a termination is in the best interest of the County. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance shall be terminated and the date upon which termination becomes effective. An equitable adjustment in the contract price shall be made for completed service, but no amount shall be allowed for anticipated profit on unperformed services.
30. **TERMINATION OF CONTRACT FOR CAUSE:**
- a. If, through any cause, the Contractor fails to fulfill in a timely and proper manner its obligations under this contract, or if the Contractor violates any of the covenants, agreements, or stipulations of this contract, the County shall have the right to terminate the contract. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination

specifying the extent to which performance shall be terminated and the date upon which termination becomes effective. In such event all finished or unfinished documents, data, studies, surveys, drawings, maps, models, and reports prepared by the Contractor under the contract shall, at the option of the County, become its property and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.

- b. Termination of the Contract for Cause does not relieve the Contractor of liability to the County for damages sustained by the County by virtue of any breach of contract by the Contractor for the purpose of set off until such time as the exact amount of damages due to the County from the Contractor is determined.
- 31. **CONTRACT ALTERATIONS:** No alterations in the terms of a contract shall be valid or binding upon the County unless made in writing and signed by the Purchasing Agent or her authorized agent.
- 32. **SUBLETTING OF CONTRACT OR ASSIGNMENT OF CONTRACT FUNDS:** It is mutually understood and agreed that the Contractor shall not assign, transfer, convey, sublet or otherwise dispose of his or her contractual duties to any other person, firm or corporation, without the previous written consent of the Purchasing Agent. If the Contractor desires to assign its right to payment of the contract, Contractor shall notify the Purchasing Agent immediately, in writing, of such assignment of right to payment. In no case shall such assignment of contract relieve the Contractor from its obligations or change the terms of the contract.
- 33. **FUNDING:** The obligation of the County to pay compensation due the Contractor under the contract or any other payment obligations under any contract awarded pursuant to this contract is subject to appropriations by the Fairfax County Board of Supervisors to satisfy payment of such obligations. The County's obligations to make payments during subsequent fiscal years are dependent upon the same action. If such an appropriation is not made for any fiscal year, the contract shall terminate effective at the end of the fiscal year for which funds were appropriated and the County will not be obligated to make any payments under the contract beyond the amount appropriated for payment obligations under the contract. The County will provide the

Contractor with written notice of non-appropriation of funds within thirty (30) calendar days after action is completed by the Board of Supervisors. However, the County's failure to provide such notice will not extend the contract into a fiscal year in which sufficient funds have not been appropriated.

- 34. **DELIVERY/SERVICE FAILURES:** If a Contractor (i) fails to deliver goods or services within the time specified or within a reasonable time as interpreted by the Purchasing Agent; or (ii) fails to make replacements or corrections of rejected articles or services when so requested, immediately or as directed by the Purchasing Agent, then the Purchasing Agent shall have the authority to purchase in the open market goods or services of comparable grade or quality to replace goods or services not delivered or rejected. On all such purchases, the Contractor shall reimburse the County, within a reasonable time specified by the Purchasing Agent, for any expense incurred in excess of contract prices. Such purchases shall be deducted from the contract quantities if applicable. Should public necessity demand it, the County reserves the right to use or consume articles delivered or services performed which are substandard in quality, subject to an adjustment in price to be determined by the Purchasing Agent.
- 35. **NON-LIABILITY:** The Contractor shall not be liable in damages for delay in shipment or failure to deliver when such delay or failure is the result of fire, flood, strike, the transportation carrier, act of God, act of Government, act of an alien enemy or by any other circumstances which, in the Purchasing Agent's opinion, are beyond the reasonable control of the Contractor. Under such circumstances, however, the Purchasing Agent may, at her discretion terminate the contract.
- 36. **NON-DISCRIMINATION:** During the performance of this contract, the Contractor agrees as follows:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
 - b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
 - d. The Contractor will include the provisions of the foregoing paragraphs a, b, and c above in every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.
 - e. Contractor shall, throughout the term of this contract, comply with the Human Rights Ordinance, Chapter 11 of the Code of the County of Fairfax, Virginia, as reenacted or amended. Contractor shall further require that all of its subcontractors will comply with the Human Rights Ordinance, Chapter 11 of the Code of the County of Fairfax, Virginia, as reenacted or amended.
- 37. **SMALL, WOMEN-OWNED, AND MINORITY-OWNED BUSINESS USE:**
 - a. It is the declared policy of the County of Fairfax, through its Small and Minority Business Enterprise Program, that Fairfax County and its employees undertake every effort to increase opportunity for use of small or minority businesses in all aspects

- of procurement to the maximum extent feasible.
- b. Where it is practicable for any portion of the awarded contract to be subcontracted to other suppliers, the contractor is encouraged to offer such subcontracting opportunities to small, women and minority businesses.
 - c. Where Federal grants or monies are involved, it is the policy of Fairfax County, through its agents and employees, to comply with the requirements set forth in the 2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, as they pertain to small and minority business use.
38. **GUARANTEES & WARRANTIES:** All guarantees and warranties required shall be furnished by the Contractor and shall be delivered to the Purchasing Agent before contract execution. Unless otherwise stated, manufacturer's standard warranty applies.
39. **PRICE REDUCTION:** If the Contractor makes a general price reduction for any material covered by the solicitation to customers generally, an equivalent price reduction shall apply to this contract for the duration of the contract period (or until the price is further reduced). Such price reduction shall be effective at the same time and in the same manner as the reduction in the price to customers generally. For purpose of this provision, a "general price reduction" shall mean any horizontal reduction in the price of an article or service offered (1) to Contractor's customers generally, or (2) in the Contractor's price schedule for the class of customers (i.e., wholesalers, jobbers, or retailers), which was used as the basis for bidding on this solicitation. An occasional sale at a lower price, or sale of distressed merchandise at a lower price is not a "general price reduction" under this provision. The Contractor shall submit its invoice at such reduced prices indicating on the invoice that the reduction is pursuant to the "Price Reduction" provision of the contract documents. The Contractor will also within ten days of any general price reduction notify the Purchasing Agent of such reduction by letter. FAILURE TO DO SO MAY RESULT IN TERMINATION OF THE CONTRACT.
40. **CHANGES:** If in the Purchasing Agent's opinion, it becomes proper or necessary in the execution of this contract to make any change in design, or to make any alterations that will increase the expense, the Purchasing Agent shall determine an equitable adjustment to the Contractor's compensation.

No payment shall be made to the Contractor for any extra material or services, or of any greater amount of money than stipulated to be paid in the contract, unless some changes in or additions to the contract requiring additional outlay by the Contractor are first expressly authorized and ordered in writing by contract amendment or otherwise furnished by the Purchasing Agent.

41. **PLACING OF ORDERS:** Orders against contracts will be placed with the Contractor by Purchase Order or Procurement Card (P-Card) executed and released by the Purchasing Agent or their designee. When a Blanket Purchase Order has been released

by the Purchasing Agent, telephonic orders may be placed directly with the Contractor by authorized personnel in the ordering Agency.

DELIVERY PROVISIONS

42. **SHIPPING INSTRUCTIONS - CONSIGNMENT:** Unless otherwise specified in the solicitation each case, container, package, etc., delivered under the contract must be plainly marked, stating the Contractor's name, purchase order number, and delivery address as indicated in the order. Deliveries must be made within the hours of 8:00 AM - 3:00 PM. Deliveries at any other time will not be accepted unless specific arrangements have been previously made with the receiver at the delivery point. No deliveries will be accepted on Saturdays, Sundays and holidays, unless previous arrangements have been made. It shall be the responsibility of the Contractor to insure compliance with these instructions for items that are drop-shipped.
43. **RESPONSIBILITY FOR MATERIALS OR GOODS TENDERED:** Unless otherwise specified in the solicitation, the Contractor is responsible for the materials or supplies covered by the contract until they are delivered at the delivery point designated by the County. The Contractor bears all risk of loss on rejected materials or supplies after notice of rejection. Rejected materials or supplies must be removed by and at the expense of the Contractor promptly after notification of rejection, unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the Contractor within ten (10) days after date of notification, the County may return the rejected materials or supplies to the Contractor at its risk and expense or dispose of them as the County's own property.
44. **INSPECTIONS:** Inspection and acceptance of materials or supplies will be made after delivery at the designated destinations unless otherwise stated. If inspection is made after delivery at the designated destination, the County will bear the expense of inspection except for the value of samples used in case of rejection. Final inspection is conclusive except in regard to latent defects, fraud or such gross mistakes as to amount to fraud. Final inspection and acceptance or rejection of the materials or supplies will be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the County for such materials or supplies as are not in accordance with the specifications.
45. **COMPLIANCE:** Delivery must be made as ordered and in accordance with the contract or as directed by the Purchasing Agent when not in conflict with the contract. The decision of the Purchasing Agent as to reasonable compliance with delivery terms shall be final. If the Contractor claims the delay in receipt of goods was caused by the County, the Contractor must provide evidence satisfactory to the Purchasing Agent supporting the Contractor's claim. Any request for extension of

delivery time from that specified in the contract must be approved by the Purchasing Agent, such extension applying only to the particular item or shipment affected. If the Contractor is delayed by the County, there shall be added to the time of completion a time equal to the period of such delay caused by the County. However, the Contractor shall not be entitled to claim damages or extra compensation for such delay or suspension. These conditions may vary for construction contracts. See contract for the individual instructions.

46. **POINT OF DESTINATION:** All materials shipped to the County must be shipped F.O.B. DESTINATION unless otherwise stated in the contract or purchase order. The materials must be delivered to the "Ship to" address indicated on the purchase order.
47. **ADDITIONAL CHARGES:** Unless bought F.O.B. "shipping point" and Contractor prepays transportation, no delivery charges shall be added to invoices except when express delivery is authorized and substituted on orders for the method specified in the contract. In such cases, difference between freight or mail and express charges may be added to invoice.
48. **METHOD AND CONTAINERS:** Unless otherwise specified, goods shall be delivered in commercial packages in standard commercial containers that are constructed to ensure acceptance by common or other carrier for safe transportation to the point of delivery. Containers become the property of the County unless otherwise specified by bidder.
49. **REPLACEMENT:** Materials or components that have been rejected by the Purchasing Agent, in accordance with the terms of a contract, shall be replaced by the Contractor at no cost to the County.
50. **PACKING SLIPS OR DELIVERY TICKETS:** All shipments must be accompanied by Packing Slips or Delivery Tickets and must contain the following information for each item delivered:
 - a. The Purchase Order Number,
 - b. The Name of the Article and Stock Number (Supplier's),
 - c. The Quantity Ordered,
 - d. The Quantity Shipped,
 - e. The Quantity Back Ordered,
 - f. The Name of the Contractor.

Contractors are cautioned that failure to comply with these conditions is sufficient reason for the County's refusal to accept the goods.

BILLING

51. **BILLING:** Billing for the Fairfax County Public Schools and for County agencies: Unless otherwise specified on the contract or purchase order (PO), invoices are to be submitted for each purchase order immediately upon completion of the shipment or services. Invoices should be mailed to the "BILL TO" address on the PO or to the appropriate address specified in the contract.

PAYMENTS

52. **PAYMENT:** Payment shall be made after satisfactory performance that is in accordance with all provisions of the contract, and upon receipt of a properly completed invoice. The County reserves the right to withhold any or all payments or portions thereof for Contractor's failure to perform in accordance with the provision of the contract or any subsequent modifications.
53. **PARTIAL PAYMENTS:** Unless otherwise specified, partial payments will be made upon acceptance of materials or services so invoiced if in accordance with completion date. However, up to 5 percent (5%) of the value of the entire order may be retained until completion of contract.
54. **PAYMENT FOR EQUIPMENT, INSTALLATION, AND TESTING:** When equipment requires installation (which includes erection, setting up or placing in position, service, or use) and testing, and the installation or testing is delayed, payment may be made based on 50% of the contract price when such equipment is delivered on the site. A further allowance of 25% may be made when the equipment is installed and ready for test. The balance shall be paid after the equipment is tested and found to be satisfactory. If the equipment must be tested, but installation is not required to be made by the Contractor or if the equipment must be installed but testing is not required, payment may be made based on 75% at the time of delivery and the balance shall be paid after satisfactory test or installation is completed.

GENERAL

55. **GENERAL GUARANTY:** Contractor agrees to:
 - a. Save the County, its agents and employees harmless from liability of any nature or kind for the use of any copyrighted or uncopyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a contract for which the Contractor is not the patentee, assignee, licensee or owner.
 - b. Warrant that when the contract includes a software license, or use of licensed software, the Contractor is the owner of the Software or otherwise has the right to grant to the County the license to use the Software granted through the Contract without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party.

- c. Protect the County against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery.
- d. Furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work or to the work of other contractors, for which his or her workers are responsible.
- e. Pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules, regulations, and policies of the County.
- f. Protect the County from loss or damage to County owned property while it is in the custody of the Contractor.

56. **SERVICE CONTRACT GUARANTY:** Contractor agrees to:

- a. Furnish services described in the solicitation and resultant contract at the times and places and in the manner and subject to conditions of those documents provided that the County may reduce the said services at any time.
- b. Enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence.
- c. All work and services rendered in strict conformance to all laws, statutes, and ordinances and the applicable government rules, regulations, methods, and procedures.
- d. Allow services to be inspected or reviewed by an employee of the County at any reasonable time and place selected by the County. The County is under no obligation to compensate Contractor for any services not rendered in strict conformity with the contract.
- e. Stipulate that the presence of a County Inspector shall not lessen the obligation of the Contractor for performance in accordance with the contract requirements, or be deemed a defense on the part of the Contractor for infraction thereof. The Inspector is not authorized to revoke, alter, enlarge, relax, or release any of the requirements of the contract documents. Any omission or failure on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material. Notification of an omission or failure will be documented by the Purchasing Agent.

57. **INDEMNIFICATION:**

- a. General Indemnification: Contractor must indemnify, keep and save harmless, and defend the County, its agents, officials, employees and volunteers against Claims that may accrue or arise against the County as a result of the granting a contract, if the Claim was caused by the negligence or error, or omission of the Contractor, its employees, its subcontractor, or its subcontractor's employees. As used in this Section, a Claim includes: injuries, death, damage to property, breach of data security, suits, liabilities, judgments, or costs and expenses. Upon request by the County, the Contractor must at its own expense: appear, defend, and pay all attorney's fees and all costs and other expenses related to the Claim. If, related to a Claim, any judgment is rendered against the County or a settlement reached that requires the County to pay money, the Contractor must at its own expense satisfy and discharge the same. Contractor expressly understands and agrees that any performance bond or insurance protection required by this Contract, or otherwise provided by the Contractor, does not limit the Contractor's responsibility to indemnify, keep and save harmless, and defend the County as provided in this Contract.
- b. Intellectual Property Indemnification: In addition to the General Indemnification, Contractor will indemnify the County for and defend the County against third-party claims for infringement of any valid United States patent, trademark or copyright by the Contractor's products, software, services, or deliverables. Contractor must indemnify the County for any loss, damage, expense or liability, including costs and reasonable attorney's fees that may result by reason of any such claim.

In the event of a claim covered by this subparagraph, and in addition to all other obligations of Contractor in this Paragraph 58, Contractor must at its expense and within a reasonable time: (a) obtain a right for the County to continue using such products and software, or allow Contractor to continue performing the Services; (b) modify such products, software, services or deliverables to make them non-infringing; or (c) replace such products or software with a non-infringing equivalent. If, in the Contractor's reasonable opinion, none of the foregoing options is feasible Contractor must immediately notify the County and accept the return of the products, software, services, or deliverables, along with any other components rendered unusable as a result of the infringement or claimed infringement, and refund to the County the price paid to Contractor for such components as well as any pre-paid fees for the allegedly infringing services, including license, subscription fees, or both. Nothing in Paragraph 58, however, relieves the Contractor of liability to the County for damages sustained by the County by virtue of any breach of contract related to a third-party infringement claim.

- c. Right to Participate in Defense. The County may, at its sole expense, participate in the defense or resolution of a Claim. Contractor will have primary control of the defense and resolution of the Claim, except when such defense or resolution requires the County to (i) admit liability or wrongdoing; or (ii) to pay money. In either of these cases Contractor must obtain the County's prior written consent before entering into such settlement or resolution.
- d. No Indemnification by the County. The parties agree that under applicable law the County cannot indemnify or defend the Contractor. To the extent any promise or term contained in this Contract, including any exhibits, attachments, or other documents incorporated by reference therein, includes an indemnification or obligation to defend by the County, that promise or term is stricken from this Contract and of no effect.

58. **OFFICIALS NOT TO BENEFIT:**

- a. Each bidder or offeror shall certify, upon signing a bid or proposal, that to the best of their knowledge no Fairfax County official or employee having official responsibility for the procurement transaction, or member of their immediate family, has received or will receive any financial benefit of more than nominal or minimal value relating to the award of this contract. If

such a benefit has been received or will be received, this fact shall be disclosed with the bid or proposal or as soon thereafter as it appears that such a benefit will be received. Failure to disclose the information prescribed above may result in suspension or debarment, or rescission of the contract made, or could affect payment pursuant to the terms of the contract.

- b. Whenever there is reason to believe that a financial benefit of the sort described in paragraph "a" has been or will be received in connection with a bid, proposal or contract, and that the Contractor has failed to disclose such benefit or has inadequately disclosed it, the County Executive, as a prerequisite to payment pursuant to the contract, or at any other time, may require the Contractor to furnish, under oath, answers to any interrogatories related to such possible benefit.
 - c. In the event the bidder or offeror has knowledge of benefits as outlined above, this information should be submitted with the bid or proposal. If the above does not apply at time of award of contract and becomes known after inception of a contract, the bidder or offeror shall address the disclosure of such facts to the Fairfax County Purchasing Agent, 12000 Government Center Parkway, Suite 427, Fairfax, Virginia 22035-0013. Relevant Invitation/Request for Proposal Number (see cover sheet) should be referenced in the disclosure.
59. **LICENSE REQUIREMENT:** All firms doing business in Fairfax County, shall obtain a license as required by Chapter 4, Article 7, of The Code of the County of Fairfax, Virginia, as amended, entitled "Business, Professional and Occupational Licensing (BPOL) Tax." Questions concerning the BPOL Tax should be directed to the Department of Tax Administration, telephone (703) 222-8234 or visit: <https://www.fairfaxcounty.gov/taxes/business/understanding-bpol-tax>. The BPOL Tax number must be indicated in the space provided on the Cover Sheet, "Fairfax License Tax No." when appropriate.
60. **AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH:** A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. Any business entity described above that enters into a contract with a Fairfax County pursuant to the Fairfax County Purchasing Resolution shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. Fairfax County may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.
61. **COVENANT AGAINST CONTINGENT FEES:** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For violation of this warranty, the County shall have the right to terminate or suspend this contract without liability to the County or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
62. **VIRGINIA FREEDOM OF INFORMATION ACT:** All proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act except as provided below:
- a. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.
 - b. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the County decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award except in the event that the County decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to the public inspection only after award of the contract except as provided in paragraph "c" below. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.
 - c. Trade secrets or proprietary information submitted by a bidder, offeror or Contractor in connection with a procurement transaction or prequalification application submitted pursuant to the prequalification process identified in the Special Provisions, shall not be subject to the Virginia Freedom of Information Act; however, the bidder, offeror or Contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.
 - d. Nothing contained in this section shall be construed to require the County, when procuring by "competitive negotiation" (Request for Proposal), to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous to the County.
 - e. The County cannot maintain as confidential any information, data, or records obtainable through the Virginia Freedom of Information or similar law. This includes records or information that have not been properly designated as trade secret or proprietary information pursuant to Va. Code Ann. § 2.2-4342(F).

BIDDER/CONTRACTOR REMEDIES

63. INELIGIBILITY:

- a. Any person or firm suspended or debarred from participation in County procurement shall be notified in writing by the Purchasing Agent.
 1. The Notice of Suspension shall state the reasons for the actions taken and such decision shall be final unless the person or firm appeals within ten (10) days of receipt of the Notice by instituting legal action as provided in the Code of Virginia.
 2. The Notice of Debarment shall state the reasons for the actions taken and the decision shall be final unless the person or firm appeals within ten (10) days of receipt of the Notice by instituting legal action as provided in the Code of Virginia.
- b. The Purchasing Agent shall have the authority to suspend or debar a person or firm from bidding on any contract for the causes stated below:
 1. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
 2. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a County Contractor;
 3. Conviction under the state or federal antitrust statutes arising out of the submission of bids or proposals;
 4. Violation of contract provisions, as set forth below, of a character which is regarded by the Purchasing Agent to be so serious as to justify suspension or debarment action:
 - a. failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - b. a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided, that failure to perform or unsatisfactory performance caused by acts beyond the control of the Contractor shall not be considered to be a basis for suspension or debarment;
 5. Any other cause the Purchasing Agent determines to be so serious and compelling as to affect responsibility as a Contractor, such as debarment by another governmental entity for any cause listed herein, or because of prior reprimands;
 6. The contractor has abandoned performance, been terminated for default on a Fairfax County project, or has taken any actions that inure to the detriment of Fairfax County or a Fairfax County project;
 7. The Contractor is in default on any surety bond or written guarantee on which Fairfax County is an obligee.
- c. If, upon appeal, it is determined that the action taken by the Purchasing Agent was arbitrary or capricious, or not in accordance with the Constitution of Virginia, statutes or regulations, the sole relief available to the person or firm shall be restoration of eligibility. The person or firm may not institute legal action until all statutory requirements have been met.

64. APPEAL OF DENIAL OF WITHDRAWAL OF BID:

- a. A decision denying withdrawal of a bid submitted by a bidder or offeror shall be final and conclusive unless the bidder appeals the decision within ten (10) days after receipt of the decision by instituting legal action as provided in the Code of Virginia. The bidder or offeror may not institute legal action until all statutory requirements have been met.
- b. If no bid bond was posted, a bidder refused withdrawal of bid under the provisions of Article 2, Section 4.A.8, of the Fairfax County Purchasing Resolution, prior to appealing, shall deliver to the County a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.
- c. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, the sole relief shall be withdrawal of the bid.

65. APPEAL OF DETERMINATION OF NONRESPONSIBILITY:

- a. Any bidder who, despite being the apparent low bidder, is determined not to be a responsible bidder for a particular County contract shall be notified in writing by the Purchasing Agent. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten (10) days of receipt of the notice by instituting legal action as provided in the Code of Virginia. The bidder may not institute legal action until all statutory requirements have been met.
- b. If, upon appeal, it is determined that the decision of the Purchasing Agent was arbitrary or capricious and the award for the particular County contract in question has not been made, the sole relief available to the bidder shall be a finding that the bidder is a responsible bidder for the County contract in question. Where the award has been made and performance has begun, the County may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing Contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing Contractor be entitled to lost profits.

66. PROTEST OF AWARD OR DECISION TO AWARD:

- a. Any bidder or offeror may protest the award or decision to award a contract by submitting a protest in writing to the Purchasing Agent, or an official designated by the County of Fairfax, no later than ten (10) days after the award or the announcement of the decision to award, whichever occurs first. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit such protest in the same

manner no later than ten days after posting or publication of the notice of such contract as provided in Article 2, Section 2, of the Fairfax County Purchasing Resolution. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction which are subject to inspection under Article 2, Section 4.D of the Fairfax County Purchasing Resolution, then the time within which the protest must be submitted shall expire ten days after those records are available for inspection by such bidder or offeror under Article 2, Section 4.D, or at such later time as provided herein. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The Purchasing Agent shall issue a decision in writing within ten (10) days of the receipt of the protest stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten (10) days of receipt of the written decision by instituting legal action as provided in the Code of Virginia. Nothing in this section shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation for Bid or Request for Proposal.

- b. If prior to award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The Purchasing Agent shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be declared void by the County. Where the award has been made and performance has begun, the Purchasing Agent may declare the contract void upon a finding that this action is in the best interest of the County. Where a contract is declared void, the performing Contractor shall be compensated for the cost of performance at the rate specified in the contract up to the time of such declaration. In no event shall the performing Contractor be entitled to lost profits.
- c. Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this article shall not be affected by the fact that a protest or appeal has been filed.
- d. An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest, no further action to award the contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

67. CONTRACTUAL DISPUTES:

- a. Any dispute concerning a question of fact as a result of a contract with the County which is not disposed of by agreement shall be decided by the Purchasing Agent, who shall reduce her decision to writing and mail or otherwise forward a copy to the Contractor within ninety (90) days. The decision of the Purchasing Agent shall be final and conclusive unless the Contractor appeals within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. A Contractor may not institute legal action, prior to receipt of the Purchasing Agent's decision on the claim, unless the Purchasing Agent fails to render such decision within the time specified.
- b. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty days after final payment; however, written notice of the Contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

68. LEGAL ACTION: No bidder, offeror, potential bidder or offeror, or Contractor shall institute any legal action until all statutory requirements have been met.

69. VENUE: This contract and its terms, including but not limited to, the parties' obligations, the performance due, and the remedies available to each party, are governed, construed, and interpreted in accordance with the laws of the Commonwealth of Virginia. Any jurisdiction's choice of law, conflicts of laws, rules, or provisions that would cause the application of any laws other than those of the Commonwealth of Virginia do not apply. Any and all disputes, claims, and causes of action arising out of or in any way connected with this contract or its performance must be brought in the applicable court of Fairfax County, or in the United States District Court for the Eastern District of Virginia, Alexandria Division.

70. COOPERATIVE PURCHASING: The County or any entity identified in the Fairfax County Purchasing Resolution, Article 1, Section 3 may participate in, sponsor, conduct or administer a cooperative procurement agreement as set forth in the Fairfax County Purchasing Resolution.

71. DRUG FREE WORKPLACE: During the performance of a contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this section, "drug-free workplace" means a site for the performance of work done in conjunction with a specific contract awarded to

a Contractor in accordance with this section, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

72. **IMMIGRATION REFORM AND CONTROL ACT:** Contractor agrees that it does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.
73. **AUDIT OF RECORDS:** The parties agree that County or its agent must have access to and the right to examine any books, documents, papers, and records of the Contractor involving transactions related to the Contract or compliance with any clauses thereunder, for a period of three (3) years after final payment. The contractor must include this requirement in all subcontracts related to this Contract.
74. **NONVISUAL ACCESS:** All information technology, which is purchased or upgraded by the County under this contract, must comply with the following access standards from the date of purchase or upgrade until the expiration of the Contract:
- a. Effective, interactive control and use of the technology (including the operating system), applications programs, and format of the data presented, shall be readily achievable by nonvisual means;
 - b. the technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom the blind or visually impaired individual interacts;
 - c. Nonvisual access technology shall be integrated into networks used to share communications among employees, program participants, and the public; and
 - d. The technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired. A covered entity may stipulate additional specifications in any procurement.
 - e. Compliance with the nonvisual access standards set out this Section is not required if the Board of Supervisors determines that (i) the information technology is not available with nonvisual access because the essential elements of the information technology are visual and (ii) nonvisual equivalence is not available.

APPROVED:

/S/ Elizabeth D. Teare
COUNTY ATTORNEY

/S/ Cathy A. Muse
COUNTY PURCHASING AGENT

PRICING SCHEDULE (Continued)

Item No.	Item Description	EST QTY.	UOM	Price per UOM	Extension
3.	MILK SHELF STABLE 1% WHITE	16,200	½ pint Carton	\$ _____	\$ _____
		300	Case	\$ _____	\$ _____

DESCRIPTION:

- Class 1, Pasteurized 8-oz cartons. 1 .0% milk fat. Homogenized, Vitamin A and Vitamin D fortified.
- Prefer no more than 12 grams of sugar per 8oz. serving.
- Prefer no more than 130mg of sodium per 8oz. serving.
- Product is to contain none of ingredients stated in Technical Specification Paragraph 1.2.
- Required product information to include nutritional content analyzed on actual portion size, ingredient statement with allergens listed, and meal contribution in accordance with the latest USDA standards.
- "Sell by", "Use by" or any other type of food label date noting expiration must be on each package or box.

STANDARD: ES Foods 64025 or equal. **PACK:** 54/8oz. per case.

PACK IF DIFFERENT: _____ **BRAND IF DIFFERENT:** _____

NUMBER OF CASES PER PALLET: _____

NUMBER OF PALLETS PER TRUCKLOAD: _____

MINIMUM ORDER QUANTITY STATED BY THE CASE: _____

PRODUCT SHELF LIFE _____ Days

PRODUCT SHELF LIFE REFRIGERATED: _____ **PRODUCT SHELF LIFE FROZEN:** _____

PACKAGE SHELF LIFE CODE:(check one) **Use By** ____ **Sell By** ____ **Best Before** ____
Expires On ____ **Pack Code** ____ **Born On** ____ **Guaranteed Fresh** ____

MAXIMUM AMOUNT OF SHELF LIFE THAT COULD BE EXPIRED UPON DELIVERY:

EXAMPLE OF MFG'S. EXPIRATION DATE CODE:

EXPLANATION OF MFG'S EXPIRATION DATE CODE:

DOES MANUFACTURER PRACTICE HACCP? Yes No _____

Delivery _____ calendar days after receipt of order.

PRICING SCHEDULE (Continued)

Item No.	Item Description	EST QTY.	UOM	Price per UOM	Extension
4.	MILK, SHELF STABLE FAT FREE CHOCOLATE	55,080	½ pint Carton	\$ _____	\$ _____
		1020	Case	\$ _____	\$ _____

DESCRIPTION:

- Non Fat, Grade A, Pasteurized, 8 oz. carton. Homogenized. Vitamin A & D fortified.
- Prefer no more than 26 grams of sugar per 8 oz. serving.
- Prefer no more than 100mg of sodium per 8 oz. serving.
- Product is to contain none of the ingredients stated in Technical Specification Paragraph 1.2.
- Required product information to include nutritional content analyzed on actual portion size, ingredient statement with allergens listed.
- "Sell by," or "Use by," or any other type of food label date noting expiration must be on each package or box.

STANDARD: ES Foods #63007, or equal. **PACK:** 54/8oz. per case

PACK IF DIFFERENT: _____ **BRAND IF DIFFERENT:** _____

NUMBER OF CASES PER PALLET: _____

NUMBER OF PALLETS PER TRUCKLOAD: _____

MINIMUM ORDER QUANTITY STATED BY THE CASE: _____

PRODUCT SHELF LIFE _____ Days

PRODUCT SHELF LIFE REFRIGERATED: _____ **PRODUCT SHELF LIFE FROZEN:** _____

PACKAGE SHELF LIFE CODE:(check one) **Use By** ____ **Sell By** ____ **Best Before** ____
Expires On ____ **Pack Code** ____ **Born On** ____ **Guaranteed Fresh** ____

MAXIMUM AMOUNT OF SHELF LIFE THAT COULD BE EXPIRED UPON DELIVERY:

EXAMPLE OF MFG'S. EXPIRATION DATE CODE:

EXPLANATION OF MFG'S EXPIRATION DATE CODE:

DOES MANUFACTURER PRACTICE HACCP? Yes No _____

Delivery _____ calendar days after receipt of order.

PRICING SCHEDULE (Continued)

Item No.	Item Description	EST QTY.	UOM	Price per UOM	Extension
9.	CHEESE STICKS, ULTRAGRAIN	435,456	2 Stick Portion	\$ _____	\$ _____
		4536	Case	\$ _____	\$ _____

DESCRIPTION:

- Cheese sticks made with low moisture, part skim mozzarella, and mozzarella cheese. Crust is to be made with whole grain flour and meet the USDA whole grain rich criteria.
- Product is to contain none of ingredients stated in Technical Specification Paragraph 1.2.
- Required product information to include nutritional content analyzed on actual portion size, ingredient statement with allergens listed, and meal contribution in accordance with the latest USDA standards.
- "Sell by", "Use by", or any other product label date noting expiration must be on each package or box.
- One 1.93oz portion cheese stick provides 1oz. equivalent of meat alternate and 1oz. equivalent grain in accordance with the child nutrition program. Letter of domestic certification is required on this product.

STANDARD: Conagra, Ultragrain Max Stix #12602 or equal. **PACK:** 192/1.93 oz. per case

PACK IF DIFFERENT: _____ **BRAND IF DIFFERENT:** _____

NUMBER OF CASES PER PALLET: _____

NUMBER OF PALLETS PER TRUCKLOAD: _____

MINIMUM ORDER QUANTITY STATED BY THE CASE: _____

PRODUCT SHELF LIFE _____ Days

PRODUCT SHELF LIFE REFRIGERATED: _____ **PRODUCT SHELF LIFE FROZEN:** _____

PACKAGE SHELF LIFE CODE:(check one) **Use By** ____ **Sell By** ____ **Best Before** ____
 Expires On ____ **Pack Code** ____ **Born On** ____ **Guaranteed Fresh** ____

MAXIMUM AMOUNT OF SHELF LIFE THAT COULD BE EXPIRED UPON DELIVERY:

EXAMPLE OF MFG'S. EXPIRATION DATE CODE:

EXPLANATION OF MFG'S EXPIRATION DATE CODE:

DOES MANUFACTURER PRACTICE HACCP? Yes No _____

Delivery _____calendar days after receipt of order.

DESCRIPTION:

- STANDARD:** JTM #5773, or equal. **PACK:** 6/5lb. bags (80 servings) per case.

PACK IF DIFFERENT: _____ **BRAND IF DIFFERENT:** _____

NUMBER OF CASES PER PALLET:

NUMBER OF PALLETS PER TRUCKLOAD:

MINIMUM ORDER QUANTITY STATED BY THE CASE:

PRODUCT SHELF LIFE	Days
--------------------	------

PRODUCT SHELF LIFE REFRIGERATED: _____ **PRODUCT SHELF LIFE FROZEN:** _____

PACKAGE SHELF LIFE CODE:(check one) **Use By** ____ **Sell By** ____ **Best Before** ____
Expires On **Pack Code** **Born On** **Guaranteed Fresh**

MAXIMUM AMOUNT OF SHELF LIFE THAT COULD BE EXPIRED UPON DELIVERY:

EXAMPLE OF MFG'S. EXPIRATION DATE CODE:

EXPLANATION OF MFG'S EXPIRATION DATE CODE:

DOES MANUFACTURER PRACTICE HACCP? Yes No _____

Delivery _____ calendar days after receipt of order.

DESCRIPTION:

- Whole grain pretzel roll, pre-sliced, no sodium.
- Each 2oz. roll contributes 2oz. equivalent grain in accordance with the child nutrition program. CN label is required on this product.
- Product is to contain none of the ingredients stated in Technical Specification Paragraph 1.2.
- Required product information to include nutritional content analyzed on actual portion size, ingredient statement with allergens listed and baking instructions. Letter of domestic certification is required.
- "Sell by," or "Use by," or any other type of food label dates noting expiration must be on each package or box.

STANDARD: J&J Snack Foods Corp, Bavarian Bakery #7051 or equal. **PACK:** 120 per case.

PACK IF DIFFERENT: _____ **BRAND IF DIFFERENT:** _____

NUMBER OF CASES PER PALLET:

NUMBER OF PALLETS PER TRUCKLOAD:

MINIMUM ORDER QUANTITY STATED BY THE CASE:

PRODUCT SHELF LIFE	Days
--------------------	------

PRODUCT SHELF LIFE REFRIGERATED: _____ **PRODUCT SHELF LIFE FROZEN:** _____

PACKAGE SHELF LIFE CODE:(check one) **Use By** ____ **Sell By** ____ **Best Before** ____
Expires On **Pack Code** **Born On** **Guaranteed Fresh**

MAXIMUM AMOUNT OF SHELF LIFE THAT COULD BE EXPIRED UPON DELIVERY:

EXAMPLE OF MFG'S. EXPIRATION DATE CODE:

EXPLANATION OF MFG'S EXPIRATION DATE CODE:

DOES MANUFACTURER PRACTICE HACCP? Yes No

Delivery calendar days after receipt of order.

PRICING SCHEDULE (Continued)

Item No.	Item Description	Est. QTY.	UOM	Price per UOM	Extension
21.	FROZEN CHICKEN WINGS	185,500	Portion	\$ _____	\$ _____
		3,500	Case	\$ _____	\$ _____

DESCRIPTION:

- Frozen fully cooked chicken wing sections.
- One portion or 4 wings should weigh 3oz. and contribute 2oz. equivalent meat/meat alternate in accordance with the child nutrition program. CN label is required on this product.
- Product is to contain none of the ingredients stated in Technical Specification Paragraph 1.2.
- Required product information to include nutritional content analyzed on actual portion size, ingredient statement with allergens listed. Letter of domestic certification is required on this product.
- "Sell by," or "Use by," or any other type of food label dates noting expiration must be on each package or box.

STANDARD: Perdue Rotisserie Flavored #07001, Gold Kist #7805 or equal. **PACK:** 4 wings (53 servings)/3oz./cs c

PACK IF DIFFERENT: _____ **BRAND IF DIFFERENT:** _____

NUMBER OF CASES PER PALLET: _____

NUMBER OF PALLETS PER TRUCKLOAD: _____

MINIMUM ORDER QUANTITY STATED BY THE CASE: _____

PRODUCT SHELF LIFE _____ Days

PRODUCT SHELF LIFE REFRIGERATED: _____ **PRODUCT SHELF LIFE FROZEN:** _____

PACKAGE SHELF LIFE CODE: (check one) **Use By** ____ **Sell By** ____ **Best Before** ____
Expires On ____ **Pack Code** ____ **Born On** ____ **Guaranteed Fresh** ____

MAXIMUM AMOUNT OF SHELF LIFE THAT COULD BE EXPIRED UPON DELIVERY:

EXAMPLE OF MFG'S. EXPIRATION DATE CODE:

EXPLANATION OF MFG'S EXPIRATION DATE CODE:

DOES MANUFACTURER PRACTICE HACCP? Yes No _____

Delivery _____ calendar days after receipt of order.

VIRGINIA STATE CORPORATION COMMISSION (SCC)
REGISTRATION INFORMATION

The bidder: _____

☐ is a corporation or other business entity with the following SCC identification number:
_____ **-OR-**

☐ is not a corporation, limited liability company, limited partnership, registered limited liability partnership, or business trust **-OR-**

☐ is an out-of-state business entity that does not regularly and continuously maintain as part of its ordinary and customary business any employees, agents, offices, facilities, or inventories in Virginia (not counting any employees or agents in Virginia who merely solicit orders that require acceptance outside Virginia before they become contracts, and not counting any incidental presence of the bidder in Virginia that is needed in order to assemble, maintain, and repair goods in accordance with the contracts by which such goods were sold and shipped into Virginia from bidder's out-of-state location) **-OR-**

☐ is an out-of-state business entity that is including with this bid/proposal an opinion of legal counsel which accurately and completely discloses the undersigned bidder's current contacts with Virginia and describes why those contacts do not constitute the transaction of business in Virginia within the meaning of § 13.1-757 or other similar provisions in Titles 13.1 or 50 of the Code of Virginia.

Please check the following box if you have not checked any of the foregoing options but currently have pending before the SCC an application for authority to transact business in the Commonwealth of Virginia and wish to be considered for a waiver to allow you to submit the SCC identification number after the due date for bids:

23

BUSINESS, PROFESSIONAL AND OCCUPATIONAL LICENSE

All firms located or operating in Fairfax County must obtain a Business, Professional and Occupational License (BPOL) as required by Chapter 4, Article 7, of the Code of the County of Fairfax, Virginia. In order for the Department of Tax Administration to determine your BPOL requirement prior to contract award, it is necessary for you to provide the following information:

- If you currently have a Fairfax County business license, please submit a copy with your proposal.
- Do you have an office in: Virginia ☐ Yes ☐ No
 Fairfax County ☐ Yes ☐ No
- Date business began/will begin work in Fairfax County _____

Provide a detailed description of the business activity that will take place in Fairfax County. If business is located outside of Fairfax County, give the percentage of work actually to be done in the County.

Signature

Date

For Office Use Only:

- Company name and address: _____

- Amount of Contract Award \$: _____
- Fairfax County Department : _____
- Department Contact: _____ Phone No.: _____
- Company Contact: _____ Phone No.: _____
- Nature of business: _____

Complete and return this form or a copy of your current Fairfax County Business License with your bid. Contract award may not be made without it.

CERTIFICATION REGARDING DEBARMENT OR SUSPENSION

In compliance with contracts and grants agreements applicable under the U.S. Federal Awards Program, the following certification is required by all offerors submitting a proposal in response to this Request for Proposal:

1. The Offeror certifies, to the best of its knowledge and belief, that neither the Offeror nor its Principals are suspended, debarred, proposed for debarment, or declared ineligible for the award of contracts from the United States federal government procurement or nonprocurement programs, or are listed in the *List of Parties Excluded from Federal Procurement and Nonprocurement Programs* issued by the General Services Administration.
2. "Principals," for the purposes of this certification, means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g., general manager, plant manager, head of a subsidiary, division, or business segment, and similar positions).
3. The Offeror shall provide immediate written notice to the Fairfax County Purchasing Agent if, at any time prior to award, the Offeror learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. This certification is a material representation of fact upon which reliance will be placed when making the award. If it is later determined that the Offeror rendered an erroneous certification, in addition to other remedies available to Fairfax County government, the Fairfax County Purchasing Agent may terminate the contract resulting from this solicitation for default.

**Printed Name of
Representative:**

Signature/Date:

_____/_____

Company Name:

Address:

City/State/Zip:

SSN or TIN No:

Certification Regarding Ethics in Public Contracting

In submitting this bid and signing below, Bidder certifies the following in connection with a bid, proposal, or contract:

Check one:

☐

1. I have not given any payment, loan, subscription, advance, monetary deposit, services or anything of more than nominal value to any public employee or official who has official responsibility and authority for procurement transactions.

☐

2. I have given a payment, loan, subscription, advance, monetary deposit, services or anything of more than nominal value to a public employee or official who has official responsibility and authority for procurement transactions, and in exchange I received consideration of substantially equal or greater value.

☐

3. I have given a payment, loan, subscription, advance, monetary deposit, services or anything of more than nominal value to a public employee or official who has official responsibility and authority for procurement transactions, but in exchange I have not received consideration of substantially equal or greater value.

If #2 above is selected, please complete the following:

Recipient: _____

Date of Gift: _____

Description of the gift and its value:

Description of the consideration received in exchange and its value:

Printed Name of Bidder/Offeror Representative: _____

Signature/Date: _____ / _____

Company Name: _____

Company Address: _____

City/State/Zip: _____

This certification supplements but does not replace the requirements set forth in paragraph 58 (OFFICIALS NOT TO BENEFIT) of the General Conditions and Instructions to Bidders included in this solicitation.

Sample Listing of Local Public Bodies

Reference Special Provisions, paragraph titled, "USE OF CONTRACTS BY OTHER PUBLIC BODIES". You may select those public bodies that this contract may be extended, a "blank" will signify a "NO" response:

	Alexandria Public Schools, VA		Maryland-National Capital Park & Planning Commission
	Alexandria Sanitation Authority		Maryland Department of Transportation
	Alexandria, Virginia		Metropolitan Washington Airports Authority
	Arlington County, Virginia		Metropolitan Washington Council of Governments
	Arlington Public Schools, Virginia		Montgomery Community College
	Bladensburg, Maryland		Montgomery County, Maryland
	Bowie, Maryland		Montgomery County Public Schools, MD
	Charles County Public Schools, MD		Northern Virginia Community College
	College Park, Maryland		Omni Ride
	Culpeper County, Virginia		Potomac & Rappahannock Trans. Commission
	District of Columbia		Prince George's County, Maryland
	District of Columbia Courts		Prince George's County Public Schools, MD
	DC Water and Sewer Authority		Prince William County Public Schools, VA
	District of Columbia Public Schools		Prince William County, Virginia
	Fairfax County Water Authority		Prince William County Service Authority
	Fairfax, Virginia (City)		Rockville, Maryland
	Falls Church, Virginia		Spotsylvania County Schools, Virginia
	Fauquier County, Virginia		Stafford County, Virginia
	Fauquier County Schools, Virginia		Takoma Park, Maryland
	Frederick City, Maryland		Upper Occoquan Sewage Authority
	Frederick County Maryland		Vienna, Virginia
	Gaithersburg, Maryland		Virginia Railway Express
	Greenbelt, Maryland		Washington Metropolitan Area Transit Authority
	Herndon, Virginia		Washington Suburban Sanitary Commission
	Leesburg, Virginia		Winchester, Virginia
	Loudoun County Sanitation Authority		Winchester Public Schools
	Loudoun County, Public Schools, VA		
	Loudoun County, Virginia		
	Manassas, Virginia		
	Manassas City Public Schools, Virginia		
	Manassas Park, Virginia		

Complete and return this form with your bid. Contract award may not be made without it.

Vendor Name

BUSINESS CLASSIFICATION

DEFINITIONS

Small Business – means a business, independently owned or operated by one or more individuals who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees, or average annual gross receipts of \$10 million or less averaged over the previous three years. One or more of the individual owners shall control both the management and daily business operations of the small business.

Minority-Owned Business - means a business concern that is at least 51% owned by one or more minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more minority individuals.

Woman-Owned Business – means a business that is at least 51% owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more women.

YOU MUST CLASSIFY YOUR BUSINESS/ORGANIZATION BY MARKING THE APPROPRIATE BOXES ON THE COVER SHEET (DPSM 30). This designation is required of all business/organizations including publicly traded corporations, non-profits, sheltered workshops, government organizations, partnerships, sole proprietorships, etc.

SUBCONTRACTOR (S) NOTIFICATION FORM

Please check here if you are not using a subcontractor: _____

Contract Number/Title: _____

Prime Contractors Name: _____

Prime Contractor's Classification Code: _____ (from Business Classification Schedule)

In accordance with the Subcontracting paragraph of the Special Provisions for the above-cited contract, you are required to provide the County with names, addresses, anticipated dollar amount and small/minority classification (use code numbers from previous page) of each first-tier subcontractor. Please complete this form and return it to this office with your bid package.

SUBCONTRACTOR(S) NAME	STREET ADDRESS	CITY	STATE	ZIP CODE	ANTICIPATED DOLLAR AMOUNT	SMALL/MINORITY CLASSIFICATION

Complete and return this form with your bid. Contract award may not be made without it.

Department of Purchasing & Supply Management
Commodity Letter of Credit

Interested Bidders:

Fairfax County Public Schools is receiving Commodity-Letters-of-Credit (CLOC) which authorizes the purchase of specific food products on the local market. It means we have approximately \$1.3 million to spend each year locally on food that we would have otherwise received in federally donated commodity funds.

The CLOC program has flexibility to permit the purchase of food products in any form that best meets the local needs. For example, a CLOC for "apples" could equate to the purchase of fresh apples, canned apple slices, applesauce, and/or apple pie. In the case of apple pie, the "apple" CLOC would be used for only that percentage of the pie that is made of apples.

Vendors awarded this contract will be required to provide the Director, Food and Nutrition Services, Fairfax County Public Schools, with (1) a monthly recap of the total by item of foods purchased, and (2) ingredient labels including the percentage by weight to the total product for those certain food ingredients indicated for purchase under the CLOC method, and (3) certification from the manufacturer that the product is domestically grown and packed. A form, which may be reproduced, is attached to this solicitation for use in certifying the use of domestically grown and produced products. It is not the intent of the study program, or Fairfax County, to have a vendor's formula or trade privileged information. The intent is to provide information specifying the precise origin and amount of a commodity (e.g., what quantity of apples in an apple turnover) for Federal reimbursement reporting.

Payment for purchases from vendors will continue to be made by Fairfax County to assure the study program will cause no delays.

In addition, Fairfax County can use the State and National Processing Contracts to purchase products made from bonus commodity products. When National Processing Contracts are utilized, a net discounted price is preferred over the rebate method.

If you have any questions regarding the CLOC process, please feel free to contact Penny E. McConnell, R.D. or the Food Bid and Contract Specialist, Fairfax County Public Schools, Food Service, at 703-813-4842.

Sincerely,

Cathy A. Muse, CPPO
Director/County Purchasing Agent

Attachment

COMMODITY LETTER OF CREDIT

I certify that to the best of my knowledge the _____ which the Fairfax County Public School District will purchase from me during the school year 2019 - 2020 using **Commodity letter of Credit (CLOC)** funds will be of domestic origin, i.e., grown and produced in the United States.

Manufacturer Name: _____

Authorized Signature: _____

Name/Title: _____

Date: _____

THIS FORM SHALL BE SIGNED AND RETURNED WITH THE BID; CONTRACT AWARD MAY NOT BE MADE WITHOUT IT.

**GENERIC COMMODITY ITEMS PROVIDED UNDER
COMMODITY-LETTER-OF-CREDIT DURING 2020-2025**

Apples
Beef
Carrots
Chicken
Dry Beans
Eggs
Fresh Produce
Green Beans
Green Peas
Oranges

Peaches
Pears
Pineapple
Pork
Potatoes
Strawberries
Sweet Corn
Sweet Potatoes
Tomatoes
Turkey

OPEN ORDER, SUCH AS

Biscuit Mix
Brown and Milled Rice
Butter)
Cheese, American Processed
Cheese, Cheddar
Cheese, Mozzarella
Corn Grits, Meal
VPP)
Corn Chips and Shells
Corn Oil and Margarine
Dry Noodles (Spaghetti, Lasagna, etc.)
Imitation Bacon Bits
Mayonnaise

Non-Fat Dry Milk
Peanut Products (Fresh, Canned, Oil,

Pie Crust or Mix
Rice Cakes
Rolled Oats, Oat Flour
Soybean products (Oil, Shortening,

Unsugared Cereals (Corn, Oat)
Vegetable Oil and Shortening

Company Letterhead

School Lunch/Child Nutrition

Product and Portion: _____ meets the Child Nutrition meal pattern in terms of
_____ meat/meat alternate, _____ bread/bread alternate, and _____ fruit/vegetable
(state what color vegetable.)

I certify that is information is true and correct.

(Company Official Signature and Title)

(Date)

The following documents which are included in this Solicitation shall be incorporated by reference in the resulting contract and become a part of said contract:

- A. County of Fairfax Cover Sheet (DPSM30)
- B. Special Provisions & Technical Specifications
- C. Appendix A (General Conditions)
- D. Appendix B (Pricing Schedule, SCC, BPOL Form, Certifications of Debarment, Certification of Ethics, Sample Jurisdiction Listing, Business Classification Schedule and Subcontractors Notification Form).
- E. All Attcahements

CONTACT INFORMATION

1. **Contract Administration:**

Designated central point of contact for questions related to the solicitation and post award matters.

NAME: _____ TITLE: _____
ADDRESS: _____ PHONE: (____) _____
EMAIL: _____

2. **Contract ordering:**

In the event your firm receives a contract as a result of this Invitation for Bid, please provide the designated central point of contact we may reach during the period of the contract term.

NAME: _____ TITLE: _____
ADDRESS: _____ PHONE: (____) _____
EMAIL: _____

3. **Accounting Administration:**

In the event your firm receives a contract as a result of this Invitation for Bid, please provide the designated central point of contact we may reach during the period of the contract term for questions related to accounting matters.

NAME: _____ TITLE: _____
ADDRESS: _____ PHONE: (____) _____
EMAIL: _____

4. **Contact for Recalls:**

NAME: _____ TITLE: _____

ADDRESS: _____ PHONE: (____) _____

EMAIL: _____

5. **Inspection of Plant Facilities:**

The Bidder certifies that an inspection of the physical facilities of this plant was conducted by"

(Name of Agency)

(Date of Last Inspection)

And this plant was:

☐ Accepted

☐ Rejected

for furnishing its products to County of Fairfax agencies.

6. **Electronic Transfer of Orders:**

- 6.1 The Bidder will describe below their ability to electronically accept and transmit orders from the schools via the Food Service Office.

Can electronically transfer orders:

Cannot electronically transfer orders:

If Electronic ability is available, Bidder will indicate kind and type of system:

Name of System Available:

Brief Description of Capability:

- 6.2 Describe the plants' security and safety equipment availability, which can protect the food supply being distributed.

7. **Credit:**

- 7.1 Vendor is to state the information required in order to initiate credit:

- 7.2 Toll free number for schools to call and request a pick-up of product for credit:

8. **Monthly Reports:**

- 8.1 The Bidder will identify the name used for reports described in paragraph 22.3 of the Special Provisions:

a. Monthly Usage Report: _____

9. **Minimum Order Amount:**

- 9.1 Please state below if there is a minimum order amount per delivery:

10. **HACCP:**

- 10.1 Does Manufacturer practice HACCP?

Yes: _____ No: _____

11. **Delivery Vehicles:**

Are your delivery vehicles equipped with back up alarms? _____

12. **Metal Detection:**

Are your products passed through metal detectors assuring they are free of metal and other foreign objects?

Yes _____ No _____

13. **Security**

13.1 Describe your security measures for your distribution facility:

14. **USDA Commodity Contracts**

14.1 Does your firm participate in commodity processing from the Virginia Department of Agriculture or United States Department of Agriculture?

YES ____ NO ____