

**AGREEMENT BETWEEN THE
KENTUCKY EDUCATIONAL DEVELOPMENT CORPORATION
AND
GORDON FOOD SERVICE**

This agreement is made and entered into the 1st day of July, 2015, by and between the **Kentucky Educational Development Corporation (KEDC)**, 904 Rose Road, Ashland, KY 41102-7104, and **Gordon Food Service (GFS)**, 342 Gordon Industrial Drive, Shepherdsville, KY 40165. KEDC is an educational cooperative organized under the Interlocal Cooperation Act and providing various services to its member school districts. KEDC is also acting as fiscal agent for all KPC members including the following similarly organized Kentucky educational cooperatives that offer bidding services:

- Green River Regional Educational Cooperative (GRREC)
- Northern Kentucky Cooperative for Educational Services (NKCES)
- Ohio Valley Educational Cooperative (OVEC)
- Southeast/South-Central Educational Cooperative (SESC)
- West Kentucky Educational Cooperative (WKEC)

This agreement commences on July 01, 2015 and will expire on June 30, 2016. This agreement incorporates the School Food Service bid (PV-SFS-2015-07) terms, and conditions, and Gordon Food Service's bid response attached hereto by reference. Upon the signature of an authorized officer of KEDC and an authorized representative of the above named company or corporation, this agreement is hereby executed.

KENTUCKY EDUCATIONAL DEVELOPMENT CORPORATION

Nancy S. Hutchinson
KEDC Executive Director Signature

6/30/2015
Date

Nancy Hutchinson
Printed Name

GORDON FOOD SERVICE

C. Patrick Wible
Signature

7/6/2015
Date

C. Patrick Wible
Printed Name

Region Sales Manager
Title

K. B. W.
KEDC Board Chairperson 7/15/15
Date



GRREC – KEDC - NKCES – OVEC - SE/SC - WKEC
KENTUCKY EDUCATIONAL DEVELOPMENT CORPORATION (KEDC)
904 ROSE ROAD, ASHLAND, KY 41102-7104
Member Services (606) 928-0205
www.kedc.org or www.kpc4me.com

* * * INVITATION TO BID * * *

BID TYPE: PRIME VENDOR

BID REFERENCE: PV-SFS-2015-07

BID PUBLIC NOTICE DATE: June 11, 2015

BID OPENING TIME, DATE: June 25, 2015, 9:00 AM

BID CONTRACT START DATE: July 1, 2015

BID ITEMS: School Food Service

STANDARD TERMS AND CONDITIONS

- Bid Purpose:** The Kentucky Educational Development Corporation (KEDC) Board of Directors, as the Legal Education Agency (LEA) for KPC solicits sealed bids that would, if accepted by the KEDC Board of Directors or its designee, establish a fixed-price contract with economic price adjustments for commercially purchased foods, meats, & supply items, with the general and detailed terms, conditions, and specifications contained in these standard terms and conditions and in the bid specific terms and conditions.
- Instructions for Bidders:** These standard terms and conditions along with the bid specific terms and conditions apply to all bids submitted. Any deviations or exceptions are to be explained as a part of the bid response. KEDC may, at its discretion, accept or reject any or all deviations or exceptions proposed. In the event of a discrepancy between the standard and bid specific terms the bid specific terms will govern.

The public notice for this invitation, the invitation itself, and any addendums can be viewed, downloaded, or printed from the Internet at www.kpc4me.com or www.kedc.org on the bid public notice date and until the time and date specified for the bid opening. Bid tabulations will be made by KEDC staff and, after the Board or its designee has taken official action, will be posted to the above websites.

- Bid Forms and Return Instructions:** KPC has an online interface that creates a confidential and encrypted electronic bid submission. Bid submission requires that each bidder has an updated vendor account. Instructions on how to register as a new vendor or update an existing account and complete the bid submission process can be found at <http://www.kpc4me.com/bid-opportunity>. For assistance with registration or technical questions regarding the online interface contact info@kpc4me.com.

Submit all bids and any attachments via the online application. No other form of bid submission (e.g., paper, telephone, facsimile, telegraph, mail, etc.) will be accepted. Bids submitted on company forms are subject to rejection.

By submitting a bid electronically the bidder acknowledges that the bidder has read this invitation, understands it, and agrees to bind by its terms and conditions.

4. **Clarification:** For clarification or additional information relative to this bid invitation contact the KEDC Member Services Team by email at KPCMemberServices@kybuy.org or phone (606) 928-0205. DO NOT CONTACT MEMBERS. Any unauthorized contact with any other official or employee in connection with this invitation is prohibited and may be cause for disqualification of the bidder.
5. **KEDC Procurement Considerations:** KEDC conducts all procurement transactions in full compliance with all applicable federal and state statutes, regulations and rules.

It is the clear intention of KEDC to foster all procurement transactions in a manner to provide to the maximum extent practicable, open and free competition. (20 U.S.C. 1221e-3(a)(1) and 3474, - 22 CFR 135)

KEDC shall make positive efforts toward procuring and utilizing small business and minority-owned business sources of supplies and services. All such efforts shall be made to allow these sources the maximum feasible opportunity to compete for contracts.

All procurement procedures developed and implemented by KEDC shall assure that unnecessary or duplicative items are not purchased. Where appropriate, considerations of lease and purchase alternatives will be made to determine which would be the most economical and practical procurement.

All KEDC bids and solicitations for goods and services shall be based upon a clear and accurate description of the technical requirements for the material, product or service to be procured. Such description shall not, in competitive procurements, contain features that unduly restrict competition. Brand name or equal clause may be used as a means to define the performance of other salient requirements of procurement, and when so used to specify features of the named brand that must be met by bidders/offer's.

A contract will be entered into by KEDC with only responsible bidders who possess the potential ability to perform successfully under the terms and conditions. Consideration shall be made for such matters as a bidder's integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. KEDC shall follow the principles of cost analysis in the review and evaluation of bids to determine if the bidder meets the requirements or reasonableness, allocability, and allowability.

KEDC shall follow the principles of cost analysis in the review and evaluation of bids to determine if the bidder meets the requirements or reasonableness, allocability, and allowability.

6. **Authentication of Bid and Statement of Non-Collusion and Non-Conflict of Interest and Compliance with the Kentucky Model Procurement Code:** By my signature on the bid certification, I hereby swear or affirm under penalty of false swearing as provided by KRS 523.040:

I am the bidder (if bidder is an individual), a partner in the bidder (if the bidder is a partnership), or an officer or employee of the bidding corporation having authority on its behalf (if the bidder is a corporation).

The costs quoted in the bid response are correct and have been arrived at by the bidder independently and have been submitted without collusion and without agreement, understanding, or planned common course of action, with any vendor of materials, equipment, or services described in the invitation to bid, designed to limit independent bidding or competition.

The contents of the bid or bids have not been communicated by the bidder, or its employees, or agents to any person not an employee or agent of the bidder or its surety on any bond furnished with the bids and will not be communicated to any such person prior to the official opening of the bid or bids. Bidder certifies that this proposal is made without prior understanding, agreement, or connection with any corporation, firm or person submitting a proposal for the same materials, supplies, or equipment, and is in all respects fair and without collusion or fraud. The bidder certifies that collusive bidding is a violation of federal law and can result in fines, prison sentences and civil damage awards.

The KEDC collective bidding process is conducted consistent with KRS Chapter 45A:345 through 45A:460, the Model Procurement Code and that the contents of the bid response and the actions taken by the bidder in preparing and submitting the bid response are in compliance with above sections of the Model Procurement Code.

The bidder is legally entitled to enter into contracts with agencies of the Commonwealth of Kentucky and is not in violation of any prohibited conflict of interest, gratuities and kickbacks including those prohibited by the provisions of the Model Procurement Code (KRS Chapter 45A). Any employee or official of KEDC or member institution, who shall take, receive, or offer to take or receive, either directly or indirectly, any rebate, percentage of contract, money, or things of value as an inducement or intended inducement, or in the procurement of business, or the giving of business, for or to or from, any person, or in open market seeking to make sales to the membership shall be deemed guilty of a felony and upon conviction such person or persons shall be subject to punishment or fine in accord with state and/or federal laws.

7. **Certification Regarding Lobbying:** The undersigned certifies, to the best of his or her knowledge and belief, that:
- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

8. **Certification Concerning Disbarment and Suspension:** I certify on behalf of myself, the company and its key employees that I, the company, or its key employees have not been proposed for debarment, debarred, or suspended by KPC, the Commonwealth of Kentucky, or any Federal Agency and are not listed on the Excluded Parties List System provided by the United States Government General Services Administration at www.epls.gov.
9. **Correction of Mistakes:** Recheck bid for possible errors; KPC will not accept any alterations or corrections, including signatures, once the bid opens. Errors discovered after public opening cannot be corrected and bidder will be required to accept a bid contract if offered.
10. **Error in Bid:** No bid will be altered, or amended after the specified time and date set for the bid opening. The KEDC Board or its designee reserves the right to waive defects and informalities in bids, to reject any or all bids, or to accept any bid as may be deemed to its interest. KEDC may allow the withdrawal of a bid where there is a patent error on the face of the bid document, or where the bidder presents sufficient evidence, substantiated by bid worksheets, that the bid was based upon an error in the formulation of the bid price.
11. **Withdrawal of Bid:** All bids shall be valid for a period of thirty (30) days from the bid opening date to allow for tabulation, evaluation, and consideration by the KEDC Board or its designee. The bidder may withdraw a bid, without prejudice, prior to the published bid opening date.
12. **Addenda:** KEDC may issue addenda to the bid after the bid has been released.
13. **Review:** After the public opening of bids received from the Bid Invitation, KEDC staff and member officials will review the results, develop a preliminary tabulation, and may contact bidders for the purpose of clarification only.
14. **Bid Protest Procedures:** The KEDC Board of Directors or its designee, shall have authority to determine protests and other controversies of actual or prospective bidders in connection with the solicitations or selection for award of a contract.

Any actual or prospective bidder, who is aggrieved in connection with solicitation or selection for award of a contract, may file protest with the Executive Director of KEDC. A protest or notice of other controversy must be filed promptly and in any event within two (2) calendar weeks after the aggrieved party knows or should have known the facts giving rise to the protest. All protests or notices of other controversies must be in writing and shall be addressed to:

**Executive Director
KEDC
904 Rose Road
Ashland, KY 41102
(606) 928-0205**

The KEDC Board of Directors or its designee shall issue a decision in writing. A copy of that decision shall be mailed or otherwise furnished to the aggrieved party and shall state the reasons for the action taken.

The decision of the KEDC Board of Directors shall be final and conclusive.

15. **Pre-Qualification:** KPC reserves the right to pre-qualify a potential bidder. Criteria for qualification shall include:
- a. Product Line - The potential bidder shall provide proof that it can provide all bid items attached hereto.
 - b. Physical Facilities - Bidder must have the warehouse facilities required to safely and securely store the products required by these specifications. Refrigeration facilities used for storing chilled and frozen products must meet recommendations of the Refrigeration Research Council. Delivery temperatures of frozen and chilled food shall be in compliance with AFDOS code as recommended by the Federal Food and Drug Administration. KEDC reserves the right to pre-qualify any or all bidders and to reject any bidder not meeting the requirements in the areas of warehouse facilities and equipment associated with and necessary for the safe and sanitary storage and delivery of food items requested in these specifications. The facilities and operating practices must, at all times, be in compliance with the United State Food, Drug, and Cosmetic Act as well as any State and Local Statute, Regulation or Ordinance.
 - c. Financial Capacity - The potential bidder shall have financing adequate to purchase items in the most economical quantities. References may be requested to document adequate financial capacity.
 - d. Service Level - If KPC does not have adequate historical data to determine the bidder's ability to comply with the service level requirement outlined in this bid invitation, then three letters of reference from previous school district customers shall be provided.
 - e. Past Performance – The bidder must demonstrate an acceptable level of past performance under previously awarded contracts including conformance to contract requirements, industry standards of performance, reasonable and cooperative behavior, commitment to customer satisfaction, and record of integrity and business ethics.
16. **Non-Assignability of Awarded Bid:** The awarded bidder cannot convey this contract to its successors or assigns without the prior, express approval of the Board of Directors of KEDC or its designee.
17. **Transmittal of Orders:** The bidder shall issue purchasing guidelines to KPC members. The members will use formal purchase orders in ordering from the awarded bidder. The successful bidder acknowledges that orders from KPC members transmitted from KEDC's office on the member's behalf are acceptable. The successful bidder may use salespeople for in-person and/or telephone solicitation of orders in accordance with a mutually arrived schedule developed between the members and the awarded bidder.

KEDC has licensed the ESM Direct Buy module for the KPC online catalog. At KEDC's option, the bidder will

1. provide a listing of all items on the contract in an electronic format specified by KEDC (including description, pricing, picture of item, etc.) to be imported into KEDC's online catalog,
2. accept faxed orders, or
3. accept e-mailed orders.

The bidder shall accept orders electronically from KEDC and/or KPC members. The bidder is responsible for all costs associated with compiling the data file containing the list of items in the bid contract. KEDC may provide setup assistance at an additional charge.

18. **Quantities:** It shall be understood that the awarded contract does not obligate KPC members to receive any quantity in excess of actual requirements.
19. **Warranty:** The awarded bidder shall make available and honor all manufacturer's warranties, both standard and extended, to all KPC members.
20. **Recalls:** The awarded bidder shall notify KPC and its members immediately of any product recalls. The awarded bidder will issue a credit or comparable substitute for any delivered, recalled product at the member's discretion. All costs associated with voluntary and involuntary product recalls shall be borne by the awarded bidder.
21. **Default:** The awarded bidder agrees to provide total requirements as listed herein, thereby minimizing occurrences when a member may have to seek other interim product sources. The awarded bidder is to deliver 100% of primary bid items within 10 business days; repeated failure to do so will result in default.
22. **Liability:** The awarded bidder agrees to protect, defend, and save harmless KEDC, KPC, and members from any suits or demands for payment that may be brought against it for the use of any patented material, process, article, or device that may enter into the manufacture, construction, or form a part of the work covered by either order or contract; and awarded bidder further agrees to indemnify and save harmless KEDC, KPC, and members from suits or actions of every nature and description brought against it for, or on account of any injuries or damages received or sustained by any party or parties by, or for any of the acts of the bidders, his servants or agents. The awarded bidder will hold KEDC and participating members harmless for any and all damages resulting from consumption of products delivered under this contract when such damages are attributed to foreign materials or other defects in products delivered by the awarded bidder.
23. **Accounting Practices:** During the life of any contract awarded as a result of this bid, the successful bidder must clearly demonstrate the capacity to provide accurate, reliable, and timely reports in terms of invoices, statements, credits, and usage data. Further, they must demonstrate the ability and capability to provide any and all data necessary to accomplish an accurate and time efficient audit of cost on items being purchased under the cost process. Discounts, rebates and credits shall be clearly identified on each invoice to KPC members.
24. **Velocity Reports:** Velocity reports in an electronic format (Microsoft Excel, Access, or SQL) specified by KPC shall be issued to KPC upon request. The awarded bidder shall compile velocity reports by member. The reports shall indicate purchasing entity, awarded bidder's item number, manufacturer item number, item description,

quantity sold, and dollar value of each item sold. KEDC will quarterly request procurement data from participating KPC members to verify velocity report accuracy.

25. **Contract Suspension:** KPC may, at its sole discretion, suspend the awarded contract for a period of up to 90 days to investigate alleged instances of material breach of contract or material non-compliance. The awarded bidder will not accept new orders from KPC members while suspended. However, the bidder may complete orders already in process. Breach of contract, default, or noncompliance renders the awarded contract null and void. The awarded bidder agrees that they have no legal recourse of any nature against KEDC, KPC, or member entities except for payment of goods, supplies and services that are due for prior purchases sold under the awarded contract. The decision of KPC regarding suspension and/or termination is final.
26. **Warning and Termination of Contract:** KEDC may terminate the contract with 30 day notice without cause. KEDC may terminate the contract in a shorter timeframe if the bidder violates the contract terms and conditions. In the event of termination, the members shall not be liable for any costs other than the cost of items delivered and accepted prior to the date of termination. The bidder may terminate the contract if the members fail to meet mutually agreeable and specified payment terms.

Each party shall follow the following procedure if the contract is to be terminated:

Step 1 - Issue a warning letter outlining the violations and state the length of time to correct the problem(s).

Step 2 - Issue a letter of intent to cancel contract, if the problem(s) is not resolved by a given date.

Step 3 - Issue a letter to cancel contract.

In the event the physical facilities of the awarded bidder are destroyed or a labor dispute makes performance under the terms of the contract impossible, the awarded bidder shall not be held liable by KPC or the members.

27. Other Conditions:

- a. The awarded bidder shall be in compliance and will comply with any and all local, state, and federal laws and regulations related to the awarded contract and the rendering of goods and /or services.
- b. The awarded contract shall be governed in all respects as to validity, construction, capacity, performance, or otherwise by the laws of the Commonwealth of Kentucky.
- c. Any suit, action or other proceeding regarding the execution, validity, interpretation, construction, or performance of this agreement against KEDC shall be filed with the Boyd County Circuit Court of the Commonwealth of Kentucky.
- d. Any suit, action or other proceeding regarding the execution, validity, interpretation, construction, or performance of this agreement against a KPC member shall be filed in the member's local circuit court.
- e. The bidder assures KEDC they are conforming and will continue to conform to the provisions of the Civil Rights Act of 1964 as amended.
- f. Kentucky Sales and Use Tax Certificate of Exemption Form will be issued upon request.

- g. The awarded bidder shall provide access to KPC members, KEDC, the Comptroller General of the United States, the United States Department of Agriculture, the Kentucky Department of Education, the Kentucky Auditor of Public Accounts or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions (7 CFR § 3016.36). Such access shall be used to ensure compliance with all applicable Federal and state statutes, regulations and rules, including but not limited to cost principles set forth in 2 CFR § 225.
- h. The awarded bidder shall comply with all applicable cost principles, including but not limited to those set forth in 2 CFR § 225.
- i. The awarded bidder shall retain all required records for three years after KPC members make final payments and all other pending matters are closed (7 CFR § 3016.36).
- j. The U.S. Department of Agriculture (USDA) prohibits discrimination against its customers, employees, and applicants for employment on the bases of race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or if all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department.
- k. The bidder is and shall remain in compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).
- l. The bidder is and shall remain in compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5).
- m. The bidder is and shall remain in compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).
- n. The bidder is and shall remain in compliance with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C.) 187 [h], Section 508 of the Clean Water Act (33 U.S.C. 1368, Executive Order 11738 and Environmental Protection Agency (EPA) regulations, (40 CFR Part 15).
- o. The bidder is and shall remain in compliance with all mandatory standards and policies relating to energy efficiency contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
- p. By signing this document, the bidder certifies that this response is made without prior understanding, agreement, or connection with any corporation, firm or person submitting a response for the same materials, supplies, or equipment, and is in all respects fair and without collusion or fraud. The bidder acknowledges that collusive bidding is a violation of federal law and can result in fines, prison sentences and civil damage awards.

- q. The bidder is legally entitled to enter into contracts with agencies of the Commonwealth of Kentucky and is not in violation of any prohibited conflict of interest, including those prohibited by provisions of KRS 164.390, KRS 61.092-61.096, KRS 42.990, KRS 45A.335-490. Any employee or official of KEDC or member institution, elective or appointive, who shall take, receive, or offer to take or receive, either directly or indirectly, any rebate, percentage of contract, money, or things of value as an inducement or intended inducement, or in the procurement of business, or the giving of business, for or to or from, any person, or in open market seeking to make sales to the membership shall be deemed guilty of a felony and upon conviction such person or persons shall be subject to punishment or fine in accord with state and/or federal laws.
- r. KEDC reserves the right to reject any and/or all bids and to waive informalities. A contract, based on this sealed bid, may or may not be awarded.

BID SPECIFIC TERMS AND CONDITIONS:

- 1. **Participating Member Institutions:** Any institution that is a member of KPC (hereinafter referred to as member or members) is eligible to utilize the Awarded Contract; however this does not mean that all members will participate. This statement of intent does not obligate any district to utilize this bid. Districts **MUST** be a member of KPC to be eligible for bid pricing. For the current list of all KPC members visit www.kpc4me.com.
- 2. **Award:** After the review of the bidresponses, the KEDC Board or its designee may award a contract based on the criteria below. In the case of identical bids, KEDC reserves the right to select and to award the contract on the basis of its reasonable determination of which bid is likely to be most beneficial to its members. The bid responses will be evaluated based on the points awarded to each bidder utilizing the following scale:

	POINTS
1. Primary item cost calculation	60
2. Secondary item cost calculation	25
3. Produce item and fixed delivery fee cost calculation	<u>15</u>
POINT TOTAL	100

One bidder will be awarded the contract to provide all items on the bid form to participating KEDC/KPC member districts.

- 3. **Primary Items:** Primary items are high volume items as determined by past usage and/or projected need as determined by KPC staff in consultation with KPC food service directors. Items marked as cycle menu items are those items included on a new cycle menu program in development by a KPC consultant. It is possible that other items are currently local cycle menu items for current KPC members. Primary item prices may be adjusted quarterly.
- 4. **Secondary Items:** Secondary items are those items outside the high volume spend threshold yet still purchased with enough frequency to warrant solicitation of a line item price. The magnitude of the list represents the desire of KPC food service directors to limit the utilization of small purchase procedures. Secondary item prices may be adjusted monthly.
- 5. **Fresh Produce:** Pricing of produce will consist of True Cost plus a fixed delivery fee per case. Definition of “True Cost” includes actual invoice cost (market cost) included and designated as such, less any promotional allowances

and bill backs, but does not include any cash discount for prompt payment. The fixed delivery fee must include sums sufficient to cover all costs of handling and delivery. Under no circumstances may any additional costs of doing business be included in True Cost. The awarded bidder will provide True Cost produce pricing for the upcoming week to KPC and its members no later than close of business Friday throughout the life of the bid. KPC reserves the right to audit invoices to verify True Cost.

Bidders are to submit True Cost pricing for the week of June 1 on the attached spreadsheet.

6. **Acceptable or Equal:** All items and quantities listed are based on past usage. Bidders may propose an alternate but equal item that meets the bid criteria for any item on the list. For all such items the bidder should list the price as alternate and insert the alternate item in a row directly below the item.
7. **Private Label:** Items with no manufacturer or manufacturer number listed were private label items on last year's bid. The bidder should complete manufacturer name and number for each of the items they propose.
8. **Prime Vendor Commitment:** KPC members participating in the contract agree to purchase 80% of all primary items on the bid exclusively from the awarded bidder.
9. **Direct to Manufacturer:** KPC reserves the right to bid direct to manufacturer in order to secure additional incentives and competitive pricing based on the needs of the membership. The awarded bidder agrees to offer assistance to KPC in any such endeavor including but not limited to providing manufacturer contact information and guidance regarding currently slotted items.

The bidder should bid a fixed fee per shipping carton for items KPC elects to bid direct to manufacturer on the attached spreadsheet. The fixed fee shall be bid in dollars and cents, and NOT as a percentage (%). The distributor's fixed fee shall remain firm for the initial one-year contract period and shall include ALL overhead, profit and handling charges.

10. **Processing of USDA Donated Foods to End Products:** The awarded bidder agrees to comply with USDA National Policy Memorandum FD-119 dated February 13, 2012. Including but not limited to:
 - a. The bidder must be approved by the appropriate state agency to participate in the USDA's Net Off Invoice/Value Pass Thru Program.
 - b. Only end products with approved end product data schedules, and that meet substitution and grading requirements in 7 CFR 250.30 may be provided.
 - c. The district must receive credit for the value of the donated foods contained in the end products through a discount from the gross case price.
 - d. The bidder must collaborate with the processor to ensure the member is an eligible participant or end products and to ascertain the quantity of end products, or the value of donated food, for which the member is eligible.
 - e. The bidder must provide notification to the processor of end product sales so that the appropriate inventory draw-down may occur.

Further the successful bidder will support the diversion of multiple donated foods to a single end product (e.g. the diversion of cheese, flour, and tomatoes to pizza).

11. **Contract Period:** The initial contract period of any contract awarded as a result of this bid is from the actual date of contract award to June 30, 2015. The contract may be extended on an annual basis by KEDC not to exceed five

years in total including the first contract period. KEDC shall notify the awarded bidder in writing of its intent to extend or not to extend the contract by March 15th of each year. If KEDC notifies awarded bidder of intent to extend the contract by one year, awarded bidder shall respond in writing by April 1st that it either does or does not intend to extend the contract. The determination to renew the contract beyond the initial year shall be determined in part by the performance of the awarded bidder and by price stability during the contract period. KEDC will periodically provide evaluation summaries to the awarded bidder (See draft copy of Evaluation Form included). If both parties agree to extend the contract by one year, awarded bidder shall respond by June 1 with any necessary price increases or decreases for the first bid period of the extended year. If price increases submitted at June 1 are deemed excessive (defined as greater than index) by KEDC then KEDC shall have cause not to extend the contract.

Any contract extension is contingent upon written agreement of KEDC and the awarded bidder. The bid will not be extended beyond any current year unless expressly approved by KEDC. KEDC reserves the right on any contract extension to revise, update, or supplement the contract.

KEDC reserves the right to extend the term for up to 180 days to continue a source of supply until new or replacement contracts are completed.

9. **Pricing:** All bid prices must include transportation and delivery charges to the location (school district, KEDC, etc.) specified during ordering. Fuel surcharges and other similar charges are not permitted. The awarded bidder shall provide each item on this bid to all KPC members at the same price. The awarded bidder MAY NOT submit multiple discount levels for the same product by KPC member.
10. **Price Adjustments:** All bid pricing shall remain firm for the duration of the awarded contract. Upward and downward price adjustments are permissible based on documented changes in the Consumer Price Index for All Urban Consumers (CPI-U) with the exception of produce as outlined above. Primary items shall be subject to quarterly adjustments, secondary items subject to monthly adjustments, and produce shall be subject to weekly adjustments. The awarded bidder shall notify KEDC 30-days prior to the start of each bid period of any requested price increases or decreases for Primary Items in the upcoming bid period. All Primary Item requests must include a usage report for the item in the previous bid period. If no price changes are received, the current price will remain in effect.
11. **Promotion:** KEDC will actively market the awarded bidder to its members. Marketing includes inclusion of your logo and contact information on the KPC website, a copy of the awarded contract sent to every KPC member, and promotion of all KPC Prime Vendor during regular district visits by KPC staff. Awarded bidder will also have access to the KPC Logo for use in promotional materials. Similarly, the awarded bidder will support the efforts of KPC by participating and sponsoring in the KEDC-KPC regional meetings and trainings.
12. **Nutritional Information:** Upon award the bidder shall provide nutritional analysis information in electronic format for import into USDA approved nutritional analysis software. Awarded bidder shall also provide upon request by the School Nutrition Director, the most recent nutritional data, meal contributions, and ingredient labels in a format specified by KPC. This information must be provided no later than 7 calendar days from the date of request.

13. **Product Safety and HACCP Information:** The successful bidder shall provide upon request by any member, the most recent MSDS information sheets for any products the bidder may deliver to said member. It is the bidder's responsibility to comply with all local, state, and federal regulations. Awarded bidder HACCP procedures are to be provided to KPC for publication on the KPC website and to KPC members upon request.
14. **Menus:** Upon request, each School Nutrition Director can be asked on a voluntary basis to supply a copy of the monthly planned menus to the awarded bidder's sales representative. It is understood that the menus are only to be used for guidance purposes by the successful bidder and in no way guaranteed.
15. **Product Protection Guarantees:** Members have automatic product protection recourse against suppliers for products that are misrepresented. According to federal regulations, the supplier whose name and address appear on the package is the responsible party. Bidders are expected to take immediate action to correct any situation in which product integrity is violated.
16. **Buy American Act:** The bidder will abide by the Buy American Act (42USC 1760(n)) and all associated USDA policy memorandums (e.g., SP 14-2012, dated February 13, 2012, attached).

In support of the Buy American provision the bidder certifies that the products provided to KPC members are domestically grown, processed, and manufactured in the United States to the maximum extent practicable.

The bidder will provide documentation to KPC prior to award and to the the member prior to shipment for each product sourced internationally. **Documentation must include item number, item description, country of origin, and exception rationale.** Allowable exceptions to the Buy American Provision are limited to 1) the product is not produced or manufactured in the United States in sufficient and reasonable available quantities of a satisfactory quality; and 2) competitive bids reveal the costs of a United States product are significantly higher than the foreign product.

KPC members reserve the right to return at the bidder's expense all items found to be in violation of the Buy American Provision if the product does not qualify for one of the exceptions listed above.

17. **Trans-fat:** Food products and ingredients used to prepare school meals must contain zero grams of trans-fat (less than 0.5 grams) per serving. Documentation for food products and food ingredients must indicate zero grams of trans-fat per serving. Acceptable documentation of the trans-fat specification includes nutrition labels or manufacturer specifications and must be provided to the member by the distributor on request. Meats that contain a minimal amount of naturally-occurring trans-fats are allowed in the school meal programs (7 CFR 210.10 (f) (4)).
18. **Administrative Fee:** The awarded bidder will pay an administrative fee of 2% on all purchases made by members under this contract to KEDC up to KEDC's cost to solicit, award, and manage the bid contract. This cost shall be fixed for the 2015-2016 contract period at \$645,000.00. The awarded bidder will make all administrative fee payments to KEDC by the 25th of the succeeding month and any checks are to be made payable to KEDC. Fees generated in excess of KEDC's cost shall be returned to each ordering district in the form of a rebate. Rebates shall be issued as a credit on the ordering schools invoice on the last billing cycle of the subsequent month. Should the parties agree not to extend the contract, any outstanding rebates earned are to be paid to the member

by check within 30 days of termination of the contract. The awarded bidder will also compile and provide to KEDC a monthly report showing all purchases made by members under this contract in a format provided by KEDC.

To ensure the utmost level of transparency, the awarded bidder will provide to KEDC and/or its member districts all information and documentation requested by KEDC and/or its member districts necessary to effectively monitor and verify all rebates, discounts and credits, to ensure that all such rebates, discounts and credits are returned to the member districts and to ensure that all administrative fees are returned to the member districts.

19. **Item Substitution and Out-of-Stock Back-Orders:** No substitutions are allowed without prior written authorization from the member. Member must be notified if item is out of stock, backordered or if timely delivery cannot be made. It is an expectation that all individual items bid are to be stocked items slotted at all distribution facilities servicing KPC members. If an awarded bidder is temporarily out of stock of a particular item, **an equal or superior product at an equal or lower price to the original item portion price shall be provided.** Awarded bidder shall maintain a 97% average weekly fill rate for all primary and secondary bid items.

If the awarded bidder fails to deliver within the time specified, or within a reasonable time as interpreted by each School Nutrition Director, or fails to make replacements of rejected articles when so requested, or demonstrates a continuous inability to secure the bid item, the school at its sole discretion, may purchase a product of equal or greater quality from another source. On all such purchases, the awarded bidder shall be responsible and liable for the difference in cost between the amount paid for the substituted product and the amount which would have been paid the awarded bidder. The awarded bidder's argument that an item could have been purchased at a lower price shall not have merit.

KEDC RESERVES THE RIGHT TO ASSESS THE AWARDED BIDDER IN THE AMOUNT OF UP TO \$1,000 PER INSTANCE FOR FAILURE TO MAINTAIN THE AVERAGE FILL RATE OR FOR FAILURE TO STOCK/SLOT PRIMARY ITEMS ON A CONTINUOUS BASIS WHICH RESULTS IN SPECIAL ORDERS OR SUBSTITUTIONS.

20. **Delivery Time:** Acceptable delivery times will generally be between 6:30 a.m. and 2:00 p.m. Deliveries are to be made to individual schools on a weekly basis. No minimum dollar or case amounts shall be required for the weekly delivery to members who agree to use the awarded bidder as a prime vendor. Additionally these members may occasionally request additional deliveries or special arrangements from time to time and awarded bidder shall respond with no extra charge.

Minimum dollar or case amounts may be required for delivery to other KPC members provided those costs are provided to the member in writing prior to delivery and are equivalent for all members regardless of location.

Specific delivery dates and times shall be negotiated with each School Nutrition Director.

21. **Delivery Procedures:** Drivers and helpers shall deliver merchandise into designated storage areas. Drivers or helpers shall not be required to store merchandise on shelves. Drivers may request the authorized school receiver to verify the accuracy of quantities delivered. Shortages, damages and substitutions shall be noted by the driver to the receiver and noted on the delivery ticket. **This signature will only indicate that the order has been received and will not indicate that the invoice has been reconciled to the actual items delivered.** All products shall be maintained at their proper temperature throughout their staging, loading, transport and delivery. All of the vendor's facilities and delivery vehicles must conform to local, state and federal rules and regulations regarding sanitation and are subject to inspection by KPC or its members or other officials at the discretion of the KPC.

It is understood that deliveries are not to be made when school is not in session with exception of the opening of school. Calendars will be provided to the successful bidders to designate off-school days. When school is cancelled because of inclement weather or any other emergency and the delivery truck is already in route, upon arrival the company driver must contact the School Nutrition Director by telephone for instructions. The school system reserves the right to accept the delivery, authorize another acceptance signature, or to return the delivery. If the truck has not left the distributor's warehouse, the delivery will be made on the next day that schools are re-opened unless notified otherwise.

An emergency delivery communication plan is to be completed and provided for each participating KPC Member upon award.

22. **Delivery Failure:** If the vendor fails to deliver an order, the vendor shall take corrective action by either making a special delivery to the member or by arranging for delivery by another vendor. The vendor shall incur any extra cost difference between the price of the originally ordered items and the price of the alternate vendor. This delivery will be made within 48 hours of the original delivery day. The vendor will provide any overtime pay incurred by any of the member's employees if a late delivery occurs.

NOTE: The awarded bidder is responsible for ensuring all the delivery personnel have the correct item numbers and prices loaded into their inventory system upon making delivery to the facility.

23. **Payments:** Each school district and/or school shall be responsible for making payment to the awarded bidder. Normally, school districts pay bills only after approval from the Board of Education which meets monthly.

24. **Audits:**

- a. KEDC reserves the right to make audits of a awarded bidder's costs records as follows:
 - i. Prior to award of contract
 - ii. Prior to approval of request for price change and following any allowed price change.
 - iii. At time of one year contract extension if awarded.
 - iv. An unscheduled audit one time during each one year bid period upon appropriate notice given to awarded bidder.
- b. The awarded bidder shall be given notice of the intent of the cooperative to conduct an audit a minimum of four weeks in advance.
- c. The audit may be conducted electronically via the internet or at a site mutually agreeable to KPC and the awarded bidder.
- d. The awarded bidder shall provide acceptable documentation as follows:
 - i. Manufacturer's invoices
 - ii. Freight bills
 - iii. Perpetual inventory records
 - iv. Market bulletins (used for distributor manufactured items and inner company billing items when price change occurs).

25. **Registered Dietician Services:** Provide on-site and telephone based Registered Dietician services using on-staff Dieticians to each participating member school district at no cost.

26. **Kentucky Broker Service:** Awarded bidder is encouraged to utilize Kentucky brokers when possible.
27. **Service Area:** Awarded bidder must be able to provide service to all KPC Members.
28. **Returns:** The awarded bidder must provide a Return Material Authorization within one (1) working day of the request by KPC member for items not subject to HACCP guidelines. Returned materials shall be restocked at no charge to KPC member.
29. **Product Evaluation:** Samples requested must be furnished free of expense to KEDC and or the KPC member for evaluation. If not destroyed or consumed in testing or evaluating, or required in connection with the award, furnished samples will, upon request, be returned at the bidder's expense. Right is reserved to mutilate or destroy any samples if considered necessary for testing purposes.
30. **Prompt Payment Discount:** Awarded bidder must provide a minimum of one half of one percent (0.5%) prompt payment discount to members for invoice payments postmarked no more than 10 days from the invoice date, and awarded bidder must provide a satisfactory explanation to KPC of how this provision will be administered so as to enable KPC to effectively monitor and verify the discounts, and to ensure that such discounts are returned to the member districts. The discount may take the form of either a deduction from the invoice, check, or credit in an amount equal to the discount payable to the member.



**United States
Department of
Agriculture**

Date: February 13, 2012

Food and
Nutrition
Service

3101 Park
Center Drive
Alexandria, VA
22302-1500

Memo Code: SP 14-2012

SUBJECT: Procurement Questions Relevant to the Buy American Provision

TO: State Directors
Child Nutrition Programs
All States

Please be aware that the original policy memorandum from April 17, 2006, (SP 20-2006) has been revised. This policy memorandum supersedes the previous version, as changes have been made for clarification purposes.

The changes amount to a rewrite of the answer to Question 3. The current version supersedes Question 3 in SP 20-2006.

Original Signed

Cynthia Long
Director
Child Nutrition Division
Attachment

Questions and Answers for Buy American Provision (SP20-2006 Revised)

1) Question: What are the requirements of the Richard B. Russell National School Lunch Act's (NSLA) Buy American provision that school food authorities (SFAs) must follow when purchasing food and food products for use in the Child Nutrition Programs?

Answer: Section 104(d) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Public Law 105-336) added a new provision, Section 12(n) of the NSLA (42 USC 1760(n)), requiring SFAs to purchase domestically grown and processed foods, to the maximum extent practicable. Purchases made in accordance with the Buy American provision must still follow the applicable procurement rules calling for free and open competition.

2) Question: How would an SFA determine it's a "domestic commodity or product"?

Answer: Section 12(n) of the NSLA defines "domestic commodity or product" as one that is produced and processed in the United States substantially using agricultural commodities that are produced in the United States. One of the reports accompanying the legislation noted that "substantially" means that over 51% of the final processed product consists of agricultural commodities that were grown domestically.

3) Question: Are there any exceptions to the requirements of the Buy American provision?

Answer: Yes. While rare, two situations which may warrant a waiver to permit purchases of foreign food products are: 1) the product is not produced or manufactured in the U.S. in sufficient and reasonable available quantities of a satisfactory quality; or 2) competitive bids reveal the costs of a U.S. product are significantly higher than the foreign product.

4) Question: Does the "Buy American" provision apply to entities that purchase on behalf of an SFA, such as a purchasing cooperative or a food service management company?

Answer: Yes. Any entity that purchases food or food products on behalf of the SFA must follow the same "Buy American" provisions that the SFA is required to follow.

5) Question: Does the "Buy American" provision apply only to purchases made using Federal funds under the Child Nutrition Programs?

Answer: No. SFAs must ensure that all procurements using funds from the nonprofit school food service account comply with the Buy American provision. Pursuant to Child Nutrition Program regulations, all Federal funds, all money received from children as payment for program meals, all proceeds from the sale of competitive foods, and all other income generated by the school food service must accrue to the food service account. As a consequence, the entire nonprofit school food service account becomes subject to Federal procurement standards.

6) Question: What can an SFA do to comply with the requirements of the Buy American provision?

Answer: There are a number of ways SFAs can comply with the provision. SFAs should be including a Buy American clause in all product specifications, bid solicitations, requests for proposals (RFPs), purchase orders, and other procurement documents issued. Additionally, SFAs are required by 7 CFR 3016.36(b)(2) to monitor contractor performance to ensure compliance with all contractual requirements, including the Buy American provision. SFAs can also ask their suppliers to provide certification as to the origin of the product which is discussed in more detail in question #9.

7) Question: How should an SFA determine the country of origin for an end product?

Answer: For manufactured end products, there is a two-part test to define end product:

(1) the article must be manufactured in the United States; and (2) the cost of domestic components must exceed 50 percent of the cost of all the components. It is not enough to assume that a product with a well recognized American brand name or product supplied by a domestic foodservice distributor complies with the Buy American provision. SFAs should inquire further with their suppliers to determine the country of origin for an end product because some products sold in school meals may carry the name brand of domestic company but the product itself may derive from another country. SFAs should also examine product packaging as the Nutrition Labeling and Education Act of 1990 mandates that the country of origin for both domestic and imported food products be identified on the product labels.

8) Question: Should SFAs rely on the distributors' reliance on information from American suppliers about the amount of domestic content in the parts, components, and other elements they buy and use for their final products?

Answer: According to the Federal Trade Commission, if given in good faith, entities can rely on information from foodservice distributors about the domestic content in the parts, components, and other elements contained in the product. However, rather than assume that the content is 100 percent U.S.-made, SFAs would be wise to ask the supplier, i.e., manufacturer or distributor, for specific information about the percentage of U.S. content. SFAs can include in their bidding process a requirement for certification along the lines of: "We require that suppliers certify the percentage of U.S. content in products supplied to us. If you are unable or unwilling to make such certification, we will not purchase from you." Appearing under this statement could be the sentence, "We certify that our _____ have at least ____ % U.S. content," with space for the supplier to fill in the name of the product and its percentage of U.S. content.

9) Question: Doesn't this place some of the burden on the manufacturers and distributors of food and food products in the Child Nutrition Programs?

Answer: Yes. The ability to certify, as required by the terms of the contract with the SFA, will require that manufacturers and processors look back far enough in the manufacturing process to be reasonably sure that any significant foreign content has been identified.

	Breakfast Meal Pattern			Lunch Meal Pattern		
	Grades K-5 ^a	Grades 6-8 ^b	Grades 9-12 ^a	Grades K-5	Grades 6-8	Grades 9-12
Meal Pattern	Amount of Food^b Per Week (Minimum Per Day)					
Fruits (cups) ^{c,d}	5 (1) ^e	5 (1) ^e	5 (1) ^e	2½ (½)	2½ (½)	5 (1)
Vegetables (cups) ^{c,d}	0	0	0	3¾ (¾)	3¾ (¾)	5 (1)
Dark green ^f	0	0	0	½	½	½
Red/Orange ^f	0	0	0	¾	¾	1¼
Beans/Peas (Legumes) ^f	0	0	0	½	½	½
Starchy ^f	0	0	0	½	½	½
Other ^{f,g}	0	0	0	½	½	¾
Additional Veg to Reach Total ^h	0	0	0	1	1	1½
Grains (oz eq) ⁱ	7-10 (1) ^j	8-10 (1) ^j	9-10 (1) ^j	8-9 (1)	8-10 (1)	10-12 (2)
Meats/Meat Alternates (oz eq)	0 ^k	0 ^k	0 ^k	8-10 (1)	9-10 (1)	10-12 (2)
Fluid milk (cups) ^l	5 (1)	5 (1)	5 (1)	5 (1)	5 (1)	5 (1)
Other Specifications: Daily Amount Based on the Average for a 5-Day Week						
Min-max calories (kcal) ^{m,n,o}	350-500	400-550	450-600	550-650	600-700	750-850
Saturated fat (% of total calories) ^{n,o}	< 10	< 10	< 10	< 10	< 10	< 10
Sodium (mg) ^{n,p}	< 430	< 470	< 500	< 640	< 710	< 740
Trans fat ^{n,o}	Nutrition label or manufacturer specifications must indicate zero grams of trans fat per serving.					

^a In the SBP, the above age-grade groups are required beginning July 1, 2013 (SY 2013-14). In SY 2012-2013 only, schools may continue to use the meal pattern for grades K-12 (see § 220.23).

^b Food items included in each food group and subgroup and amount equivalents. Minimum creditable serving is ½ cup.

^c One quarter-cup of dried fruit counts as ½ cup of fruit; 1 cup of leafy greens counts as ½ cup of vegetables. No more than half of the fruit or vegetable offerings may be in the form of juice. All juice must be 100% full-strength.

^d For breakfast, vegetables may be substituted for fruits, but the first two cups per week of any such substitution must be from the dark green, red/orange, beans and peas (legumes) or “Other vegetables” subgroups as defined in §210.10(c)(2)(iii).

^e The fruit quantity requirement for the SBP (5 cups/week and a minimum of 1 cup/day) is effective July 1, 2014 (SY 2014-2015).

^f Larger amounts of these vegetables may be served.

^g This category consists of “Other vegetables” as defined in §210.10(c)(2)(iii)(E). For the purposes of the NSLP, “Other vegetables” requirement may be met with any additional amounts from the dark green, red/orange, and beans/peas (legumes) vegetable subgroups as defined in §210.10(c)(2)(iii).

^h Any vegetable subgroup may be offered to meet the total weekly vegetable requirement.

ⁱ At least half of the grains offered must be whole grain-rich in the NSLP beginning July 1, 2012 (SY 2012-2013), and in the SBP beginning July 1, 2013 (SY 2013-2014). All grains must be whole grain-rich in both the NSLP and the SBP beginning July 1, 2014 (SY 2014-15).

^j In the SBP, the grain ranges must be offered beginning July 1, 2013 (SY 2013-2014).

^k There is no separate meat/meat alternate component in the SBP. Beginning July 1, 2013 (SY 2013-2014), schools may substitute 1 oz. eq. of meat/meat alternate for 1 oz. eq. of grains after the minimum daily grains requirement is met.

^l Fluid milk must be low-fat (1 percent milk fat or less, unflavored) or fat-free (unflavored or flavored).

^m The average daily amount of calories for a 5-day school week must be within the range (at least the minimum and no more than the maximum values).

ⁿ Discretionary sources of calories (solid fats and added sugars) may be added to the meal pattern if within the specifications for calories, saturated fat, trans fat, and sodium. Foods of minimal nutritional value and fluid milk with fat content greater than 1 percent milk fat are not allowed.

^o In the SBP, calories and trans fat specifications take effect beginning July 1, 2013 (SY 2013-2014).

^p Final sodium specifications are to be reached by SY 2022-2023 or July 1, 2022. Intermediate sodium specifications are established for SY 2014-2015 and 2017-2018. See required intermediate specifications in § 210.10(f)(3) for lunches and § 220.8(f)(3) for breakfast

Sodium Reduction: Timeline & Amount				
Age/Grade Group	Baseline: Average Current Sodium Levels As Offered¹ (mg)	Target 1: July 1, 2014 SY 2014-2015 (mg)	Target 2: July 1, 2017 SY 2017-2018 (mg)	Final Target: July 1, 2022 SY 2022-2023 (mg)
School Breakfast Program				
K-5	573 (elementary)	< 540	< 485	< 430
6-8	629 (middle)	< 600	< 535	< 470
9-12	686 (high)	< 640	< 570	< 500
National School Lunch Program				
K-5	1,377 (elementary)	< 1,230	< 935	< 640
6-8	1,520 (middle)	< 1,360	< 1,035	< 710
9-12	1,588 (high)	< 1,420	< 1,080	< 740

¹ SNDA-III