



KENTUCKY EDUCATIONAL DEVELOPMENT CORPORATION (KEDC)
904 ROSE ROAD
ASHLAND, KY 41102-7104
(606) 928-0205
www.kedc.org

*** * * REQUEST FOR PROPOSAL * * ***

REFERENCE:	<u>PV-DAIRY-2023</u>
PUBLIC NOTICE DATE:	<u>June 30, 2023</u>
OPENING DATE & TIME:	<u>July 21, 2023, 2:00 PM EASTERN</u>
CONTRACT PERIOD:	<u>August 1, 2023 – July 31, 2024</u>
ITEMS:	<u>Fresh Dairy</u>

The Kentucky Educational Development Corporation (KEDC) Board of Directors solicits sealed proposals that would, if accepted by the KEDC Board of Directors or its designee, establish contracts, with the general and detailed terms, conditions, and specifications contained in these standard terms and conditions and in the RFP specific terms and conditions.

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STANDARD TERMS AND CONDITIONS

1. INSTRUCTIONS FOR SUBMITTAL: These standard terms and conditions along with the solicitation specific terms and conditions apply to all proposals submitted. Explain any requested deviations or exceptions as part of your proposal. 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 RFP specific terms the RFP specific terms will govern.

The public notice for this request for proposal, the request for proposal itself, and any addendums are available for view, download, or print from the Internet at www.kpc4me.com on the public notice date and until the time and date specified for the RFP opening. Tabulations will be made by KEDC staff and, after the KEDC Board or its designee has taken official action, will be posted to the above website.

KEDC is utilizing the online procurement services of KPC to facilitate this solicitation. KPC has an online interface that creates a confidential and encrypted electronic submission. Proposal submission requires that each respondent has an updated vendor account. Instructions on how to register as a new vendor or update an existing account and complete the 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 proposals and any attachments via the online application. No other form of submission (e.g., paper, telephone, facsimile, telegraph, mail, etc.) will be accepted. Proposals submitted on company forms are subject to rejection. The respondent acknowledges that the respondent has read this request for proposal, understands it, and agrees to abide by its terms and conditions.

2. CLARIFICATION: For clarification or additional information relative to this request for proposal contact the KEDC Member Services Team by email at memberservicesteam@kedc.org or phone (606) 928-0205.
3. 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 ensure 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 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 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 respondent.

A contract will be entered into by KEDC with only responsible respondents who possess the potential ability to perform successfully under the terms and conditions. Consideration shall be made for such matters as a respondent'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 responses to determine if the respondent meets the requirements or reasonableness, allocability, and allowability.

4. AUTHENTICATION OF RESPONSE AND STATEMENT OF NON-COLLUSION AND NON-CONFLICT OF INTEREST AND COMPLIANCE WITH THE KENTUCKY MODEL PROCUREMENT CODE: By my signature on the certification or by electronically submitting my response to this solicitation, I hereby swear or affirm under penalty of false swearing as provided by KRS 523.040:
- a. I am the respondent (if respondent is an individual), a partner in the respondent (if the respondent is a partnership), or an officer or employee of the submitting corporation having authority on its behalf (if the respondent is a corporation).
 - b. The costs quoted in the response are correct and have been arrived at by the respondent 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 solicitation, designed to limit independent competition.
 - c. The contents of this response have not been communicated by the respondent, or its employees, or agents to any person not an employee or agent of the respondent or its surety on any bond furnished with the response and will not be communicated to any such person prior to the official opening of the response. Respondent 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 respondent certifies that collusion is a violation of federal law and can result in fines, prison sentences and civil damage awards.
 - d. The respondent is legally entitled to enter 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 federal laws.

- e. The KEDC collective procurement process is conducted consistent with KRS Chapter 45A:345 through 45A:460, the Model Procurement Code, and that the contents of this response and the actions taken by the respondent in preparing and submitting the response comply with the above referenced sections of the Model Procurement Code.

5. **CERTIFICATION REGARDING LOBBYING:** The respondent certifies, to the best of his or her knowledge and belief, that:

- a. 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.
- b. 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.
- c. The respondent shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.
- d. This certification is a material representation of fact, upon which reliance was placed when this transaction was made or entered into. The Respondent will comply with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) and the New Restrictions on Lobbying and has signed and attached to this agreement the Certificate Regarding Lobbying and, if applicable, the Disclosure of Lobbying Activities (Forms SF-LLL) and annually will sign and submit a certificate, if applicable, Form SF-LLL to KEDC.

6. **CERTIFICATION CONCERNING DISBARMENT AND SUSPENSION:** The respondent understands that a contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension."

By electronically submitting this solicitation, the respondent certifies as follows:

The certification in this clause is a material representation of fact relied upon by KEDC. If it is later determined that the respondent knowingly rendered an erroneous certification, in addition to remedies available to KEDC, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The respondent agrees to comply with the requirements of 2 CFR 180.220 while this offer is valid and throughout the period of any contract that may arise from this offer. The respondent further agrees to include a provision requiring such compliance in its lower tier covered transactions.

7. **ERROR IN SUBMISSION:** No submission may be altered or amended after the specified time and date set for the opening. The Board or its designee reserves the right to waive defects and informalities in response, to reject any or all submissions, or to accept any response as may be deemed to its interest. KEDC may allow the withdrawal of a submission where there is a patent error on the face of the document, or where the respondent presents sufficient evidence, substantiated by worksheets, that the response was based upon an error in the formulation of the price.
8. **WITHDRAWAL OF SUBMISSION:** All submissions shall be valid for a period of thirty (30) days from the opening date to allow for tabulation, study, and consideration by the Board or its designee. The respondent may withdraw a submission, without prejudice, prior to the published opening date.
9. **ADDENDA:** KEDC may issue addenda to the solicitation after its release.
10. **PROTEST PROCEDURES:** The Board or its designee shall have authority to determine protests and other controversies of actual or prospective respondents in connection with the solicitations or selection for award of a contract.

Any actual or prospective respondent, who is aggrieved in connection with solicitation or selection for award of a contract, may file protest with the Office of the Executive Director of KEDC. A protest or notice of other controversy regarding the solicitation must be filed prior to the opening. A protest or notice of other controversy regarding and award must be filed promptly within two (2) calendar weeks after award. All protests or notices of other controversies must be in writing and addressed to:

KEDC
ATTN: Chief Executive Officer
904 Rose Road
Ashland, KY 41102

The Board 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 Board shall be final and conclusive.

11. **CONTRACTOR CERTIFICATION:** By entering into a contract with KEDC, the contractor warrants compliance with the federal immigration and nationality act (FINA), and all other federal and state immigration laws

and regulations. The contractor warrants that it is following the various state statutes of all states in which it will operate this contract.

Participating government entities including school districts may request verification of compliance from any contractor or contractor's supplier performing work under this contract. These entities reserve the right to confirm compliance in accordance with applicable laws.

Should the participating entities suspect or find that the contractor or any of its suppliers are not in compliance, they may pursue all remedies allowed by law, including, but not limited to:

- suspension of work,
- termination of the contract for default,
- and debarment of the contractor.

All costs necessary to verify compliance are the responsibility of the contractor.

The respondent complies and maintains compliance with the appropriate federal immigration laws by state employers, state contractors and state subcontractors in accordance with the e-verify employee eligibility verification program (<http://www.uscis.gov/e-verify>).

Contractor and contractor's vendors and their employees shall not provide services on member properties until authorized by the member.

Contractor shall comply with governing board policy of the KEDC participating entities in which work is being performed.

12. PRE-QUALIFICATION: KEDC reserves the right to pre-qualify any respondent, especially those that have not previously participated in the KEDC program. Criteria for qualification shall include:

- a. Physical Facilities - Respondent must have the warehouse facilities required to store safely and securely the products required by these specifications. KEDC reserves the right to prequalify any or all respondents and to reject any respondent not meeting the requirements in the areas of warehouse facilities and equipment associated with and necessary for the safe and sanitary storage of items requested in these specifications. The facilities and operating practices must, always, comply with the United State Food, Drug, and Cosmetic Act as well as any State and Local Statute, Regulation or Ordinance where applicable.
- b. Financial Capacity - The potential respondent shall have adequate financing to purchase items in the most economical quantities. Financial references may be requested to document adequate financial capacity.
- c. Service Level - If KEDC does not have adequate historical data to determine the respondent's ability to comply with the service level requirement outlined in this solicitation, then three letters of reference from previous school district customers shall be provided.
- d. Past Performance – The respondent 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.

13. **NEGOTIATION:** KEDC reserves the right pursuant to KRS 45A.370 to negotiate a contract with the top-scored firms. In the event KEDC cannot reach agreement with the top-ranked firms, it may proceed to negotiate with the next highest ranked firm, and so on. It is KEDC's intent to award a contract to the firm(s) with whom successful negotiations are completed.

Terms and conditions that may be negotiated at the sole discretion of KEDC include but are not limited to issues related to the Technical and/or Cost Proposals.

14. **NON-ASSIGNABILITY OF AWARD:** Contractor shall not transfer any contract resulting from this solicitation to its successors or assigns without the prior, express approval of the Board or its designee.

15. **PIGGYBACK CLAUSE:** KEDC reserves the right to extend the terms, conditions, and prices of the awarded respondent to other Institutions who express an interest in participating in any contract that results from this proposal. Each of the piggyback Institutions will issue their own purchasing documents for purchasing of goods. The respondent agrees that KEDC shall bear no responsibility or liability for any agreements between the respondent and the other Institution(s) who desire to exercise this option. Piggyback contracts may not extend beyond the contact date set by KEDC. Participation by other institutions may not result in a material change to the contract.

16. **TRANSMITTAL OF ORDERS:** The members will use formal purchase orders in ordering from the contractor. The successful respondent acknowledges that orders from KEDC members transmitted from KEDC's office on the member's behalf are acceptable. The successful respondent may use salespeople for in-person and/or telephone solicitation of orders in accordance with a mutually agreed schedule developed between the members and the contractor. The respondent shall accept orders electronically from KEDC and members.

17. **QUANTITIES:** It shall be understood that the contract will not obligate KEDC or its members to purchase from the contractor.

18. **WARRANTY:** The contractor shall make available and honor all manufacturer's warranties, standard and extended, to all KEDC members.

19. **HEALTH PRECAUTIONS:** Any employee or subcontractor of the awarded respondent must abide by all posted safety guidelines when on premise (e.g., temperature checks, wearing a mask, etc.). Should an employee or subcontractor show signs of a fever, the district may refuse entry and reserves the right to notify the awarded respondent and local health officials. The awarded respondent shall notify the member within 24 hours of any positive tests for communicable diseases (corona virus, influenza, etc.) among employees and subcontractors who have visited a member facility in the last 14 days. The awarded respondent need not identify the individual; they need only acknowledge the positive test and detail the steps taken to mitigate the risk posed.

20. **RECALLS:** The contractor shall notify KEDC and its members immediately of any product recalls and 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 contractor.
21. **RETURNS:** The contractor must provide a Return Material Authorization within 1 working day of the request by a KEDC member. Materials must be restocked at no charge to the member (special order and custom crafted items excluded).
22. **LIABILITY:** The contractor agrees to protect, defend, and save harmless KEDC 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 further agrees to indemnify and save harmless KEDC 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 contractor, his servants or agents. The contractor will hold KEDC and participating members harmless for all damages resulting from consumption of products delivered under this contract when such damages are attributed to foreign materials or other defects.
23. **ACCOUNTING PRACTICES:** During the life of any contract awarded resulting from this solicitation, the contractor must clearly demonstrate the capacity to provide accurate, reliable, and timely reports in terms of invoices, statements, credits, and usage data. Further, the contractor must demonstrate the capability to provide 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 KEDC members.
24. **ITEM SUBSTITUTION AND OUT-OF-STOCK BACK-ORDERS:** Substitutions require prior written authorization from the member. The contractor is required to notify the member if an item is out of stock, backordered, or if timely delivery is not feasible. Upon member notification, the contractor must receive written directions from the member on how to proceed (i.e., cancel, process, etc.).
25. **PENALTY:** The contractor agrees to provide total requirements as listed herein, thereby minimizing occurrences when a member may have to seek other interim product sources. One hundred percent (100%) of stock items are to be delivered within 10 business days; repeated failure to meet delivery timelines may be considered default.
26. **PRODUCT AND SAFETY INFORMATION:** The contractor shall provide, upon request by any member, the most recent MSDS information sheets for any products delivered to said member. It is the contractor's responsibility to comply with all local, state, and federal product and safety regulations.
27. **VELOCITY REPORTS:** Velocity reports in an electronic format (CSV, XLSX, etc.) specified by KEDC shall be issued upon request. The contractor shall compile velocity reports by member. The reports shall indicate purchasing entity, contractor item number, manufacturer item number, item description, and quantity

and dollar value of each item sold. KEDC may request procurement data from participating members to verify velocity report accuracy.

28. **CONTRACT SUSPENSION:** KEDC 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. Breach of contract, default, or noncompliance renders the awarded contract null and void. The contractor agrees that they have no legal recourse of any nature against KEDC or member entities except for services that are due for prior purchases under the contract. The decision of KEDC regarding suspension and/or termination is final.
29. **TERMINATION FOR CONVENIENCE:** KEDC reserves the right to terminate any contract at any time, completely or in part, by thirty (30) days written notice to contractor. Upon receipt by the contractor of a notice of termination, the contractor shall discontinue all services with respect to the applicable contract. The participating member, after deducting any amount(s) previously paid, shall pay for all services rendered or goods supplied by the contractor, as well as any reasonable costs incurred by the contractor up to the time of termination but not including the contractor's loss of profit. The cost of any agreed upon services provided by the contractor will be calculated at the agreed upon rate prior to notice of termination and a fixed fee contract will be pro-rated (as appropriate).
30. **TERMINATION FOR NON-PERFORMANCE (DEFAULT):** KEDC may terminate the resulting contract for non-performance, as determined by KEDC, for such causes as:
- a. Failing to provide satisfactory quality of service, including, failure to maintain adequate personnel, whether arising from labor disputes, or otherwise any substantial change in ownership or proprietorship of the contractor, which in the opinion of KEDC is not in its best interest, or failure to comply with the terms of this contract.
 - b. Failing to keep or perform, within the period set forth herein, or violation of, any of the covenants, conditions, provisions, or agreements contained herein.
 - c. Adjudicating as a voluntarily bankrupt, making a transfer in fraud of its creditors, filing a petition under any section from time to time, or under any similar law or statute of the United States or any state thereof, or if an order for relief shall be entered against the contractor in any proceeding filed by or against contractor thereunder. In the event of any such involuntary bankruptcy proceeding being instituted against the contractor, the fact of such an involuntary petition being filed shall not be considered an event of default until sixty (60) days after filing of said petition in order that the contractor might during that sixty (60) day period may seek dismissal of the involuntary petition or otherwise cure said potential default; or
 - d. Making a general assignment for the benefit of its creditors, or taking the benefit of any insolvency act, or if a permanent receiver or trustee in bankruptcy shall be appointed for the contractor.
31. **DEMAND FOR ASSURANCES:** If KEDC has reason to believe the contractor will be unable to perform under the contract, it may make a demand for reasonable assurances that the contractor will be able to timely perform all obligations under the contract. If the contractor is unable to provide such adequate

assurances, then such failure shall be an event of default and grounds for termination of the contract.

32. NOTIFICATION: KEDC will provide ten (10) calendar days written notice of default. Unless arrangements are made to correct the non-performance issues to KEDC's satisfaction within ten (10) calendar days, KEDC may terminate the contract by giving written notice of its intent to cancel this contract.
33. ATTORNEY FEES: If either party deems it necessary to take legal action to enforce any provision of the contract, and in the event KEDC prevails, the contractor agrees to pay all expenses of such action, including attorney's fees and costs at all stages of litigation.
34. COMPENSABLE DAMAGES FOR BREACH: The contractor agrees that the following items shall be included as compensable damages for any breach of contract with KEDC.
 - a. Replacement costs
 - b. Cost of repeating the competitive procurement procedure
 - c. Expenses incurred as the result of a delay in obtaining replacements.

The enumeration of compensable damage contained in this section is not intended to be exclusive and will not operate to bar recovery by KEDC for any other damages occasioned by the contractor's breach of contract. However, in cases where the contract provides for liquidated damages, said liquidated damages shall be in lieu of all other damages, including those enumerated.

35. SEVERABILITY: If any provision of the contract is determined by any court or governmental authority to be unenforceable, the parties intend that the contract be enforced as if the unenforceable provisions were not present. and that any partially valid and enforceable provisions be enforced to the extent that they are enforceable.

36. OTHER CONDITIONS:

- a. The respondent is legally entitled to enter 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.
- b. KEDC reserves the right to reject any and/or all submissions and to waive informalities. A contract, based on this sealed response, may or may not be awarded.
- c. The contractor shall comply and will comply with all local, state, and federal laws and regulations related to the contract and the rendering of goods and /or services.

- d. The contract shall be governed in all respects as to validity, construction, capacity, performance, or otherwise by the laws of the Commonwealth of Kentucky.
- e. Any suit, action or other proceeding regarding the execution, validity, interpretation, construction, or performance of this contract brought against KEDC shall be filed in the Boyd County Circuit Court of the Commonwealth of Kentucky.
- f. Any suit, action or other proceeding regarding the execution, validity, interpretation, construction, or performance of this contract brought against any participating member shall be filed in the participating member's local jurisdiction.
- g. The contractor affirms conformance with the provisions of the Civil Rights Act of 1964 as amended.
- h. Kentucky Sales and Use Tax Certificate of Exemption Form will be issued upon request.
- i. The contractor shall provide access to KEDC, member entities, 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.
- j. The contractor shall comply with all applicable cost principles, including but not limited to those set forth in 2 CFR § 225.
- k. The contractor shall retain all required records for three years after KEDC members make final payments and all other pending matters are closed (7 CFR § 3016.36).
- l. The contractor is and shall remain in compliance with all Federal Equal Employment Opportunity provisions. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." (2 CFR §200 Appendix II (C))
- m. Where applicable, the contractor 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).
- n. Where applicable, the contractor 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).

- o. Where applicable, the contractor 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).
- p. Where applicable, the contractor agrees to comply with all standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. and the Federal Water Pollution Control Act as amended 33 U.S.C. §§ 1251 et seq. The Contractor agrees to report each violation to the USDA and the appropriate EPA Regional Office.
- q. Where applicable, the contractor 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).
- r. Where applicable, the contractor agrees to abide by the federal requirements regarding “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency. (2 CFR §200 Appendix II (F))
- s. The contractor acknowledges a non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. (2 CFR § 200.323)
- t. Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems for the following.
 - i. Covered telecommunications equipment as described in Public Law 115-232, section 889, produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - ii. Public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - iii. Telecommunications or video surveillance services provided by such entities or using such equipment.
 - iv. Any telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country. (2 § 200.216)
- u. As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a federal award, provide a preference for the purchase,

acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). (2 § 200.322)

- v. The contractor is and shall remain in compliance with all local, state, and national requirements for employee background checks.

RFP SPECIFIC TERMS AND CONDITIONS:

- 1. PARTICIPATING MEMBER INSTITUTIONS: Any institution that is a member of KEDC (hereinafter referred to as member or members) is eligible to utilize the awarded proposal; however, this does not mean that all members will participate. This statement of intent does not obligate any district to utilize an awarded proposal.
- 2. AWARD: After the review of the proposals, the KEDC Board or its designee may accept one or more proposals based on the needs of the members. Each participating member will score all responsive and responsible proposals using the following criteria:

	POINTS
1. Market basket analysis or price evaluation	50
2. Item Availability	20
3. Service History	30
POINT TOTAL	100

Member scoring will serve as a recommendation to the KEDC board. However, only the KEDC board has the authority to make an award and issue a contract. Awards will be given to the highest scored responsive and responsible respondent on a member-by-member basis. Respondents deemed not responsive or responsible will be rejected and no further evaluation of their proposal submission will occur.

- 3. SERVICE AREA: A respondent will not be required to sell to or serve all eligible members. Any respondent that cannot serve all members is required to complete the Service Area Tab in the provided Excel Workbook indicating the members the respondent can serve. If this list is not returned, the awarded proposal will be available to all members.
- 4. MARKET BASKET ANALYSIS: The Market Basket Analysis sample is established based on the value of the contract to be awarded. The most recent velocity/sales report from our current suppliers was used to project the balance for the coming year. As a result, the following items may be utilized in evaluating each proposal at the member’s discretion:
 - 1% White Milk ½ Pint Carton or Container
 - 1% Chocolate Milk ½ Pint Carton or Container
 - Nonfat Chocolate Milk ½ Pint Carton or Container

Members may also elect to evaluate each vendor’s response based on the full catalog of prices submitted if it is determined to be in their best interest.

5. ESTIMATED QUANTITIES: Quantities listed in this solicitation are based on last year's usage. KEDC makes no guarantee or commitment of any kind regarding usage of any contracts resulting from this solicitation.
6. SOLICITATION OF QUOTES: KEDC members may exercise their rights to solicit quotes on all non-awarded items in accordance with all rules, regulations, and governing small purchase procedure policies. Quotes for non-awarded items shall be at the price mutually agreeable between the vendor and the member and shall be inclusive of all delivery and other associated costs.
7. CONTRACT PERIOD: The contract period is for one year plus any extensions and will expire July 31, 2024. 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 respondent in writing of its intent to extend or not to extend the contract by May 15th of each year. If KEDC notifies the awarded respondent of intent to extend the contract by one year, the awarded respondent shall respond in writing by June 1st that it does not intend to extend the contract, or with any necessary price increases or decreases for the first contract period of the extended year. The determination to renew the contract beyond the initial year shall be determined in part by the performance of the awarded respondent and by price stability during the contract period. If price increases submitted are deemed excessive by KEDC, then KEDC shall have cause to not extend the contract.

Any contract extension is contingent upon written agreement of KEDC and the awarded respondent. The contract will not be automatically 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 terms and conditions including the assessment of administrative fees to the awarded respondent as needed to cover the cost of KEDC servicing the contract for the members.

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.

8. PRICING: All submitted pricing must include transportation and delivery charges to the location (member, KEDC, etc.) specified during ordering. Fuel surcharges and other similar charges are NOT permitted. The awarded respondent shall provide each awarded item to all members at the same price. The awarded respondent MAY NOT submit multiple discount levels for the same product by KEDC member.
9. ESCALATING AND FIRM PRICING: Awards will be based on both escalating and firm prices. Members will have the option of purchasing from the firm or escalating price. Members will stipulate which price package they will be using annually. Members will be informed that they will have to stay with this choice (Firm or Escalating) for the duration of the contract (12 months).

Escalating prices shall be firm for thirty (30) days, after which prices for milk may **escalate/de-escalate** in accordance with changes in the Class I Skim Milk Price per hundred weight and Butterfat price per pound

as announced in the Federal Milk Market Order No. 5 (or whichever Milk Market Order applies to your geographic area).

Any changes (up or down) in price must be announced to the member within the week following the issuance of the Milk Market Order announcement and must be accompanied by a copy of the announcement and conversion calculations used by the supplier to arrive at the amount of increase or decrease.

10. **CONTRACT MODIFICATION:** During the term(s) of a contract awarded under this solicitation, additional purchases not included in this solicitation list and resulting awarded contract may become necessary and benefit the member. Both parties agree that the aggregate value of added purchases during each year of the contract, if renewable, shall not exceed 15% of the estimated total value of the contract. For each contract renewal, the total actual value of the contract in the preceding year and the additions made during the contract term, will be the basis for determining the maximum dollar amount (not to exceed 15%) of additional goods that will be allowed during the next contract renewal year.
11. **PROMOTION:** KEDC will actively market the awarded respondent to its members. Marketing includes inclusion of your logo, your contact information, and a copy of the awarded contract made available to every KEDC member online, and promotion of all KEDC Preferred Vendors during regular district visits by KEDC staff. KEDC may negotiate a formal marketing agreement with the awarded respondent(s).
12. **NUTRITIONAL INFORMATION:** Awarded respondent shall provide upon request of the member, the most recent nutritional data, meal contributions, and ingredient labels in a format specified by KEDC. This information must be provided no later than 7 days from the date of request.
13. **MILK SPECIFICATION:** Milk is required in the Kentucky School Systems Nutrition Services Program to be furnished and delivered in accordance with the following:
 - a. There are approximately 177 school days during which milk will be needed by school members. In addition, milk will be needed at some schools during the Summer Lunch Program.
 - b. All milk is to be pasteurized and homogenized. All milk shall be produced, processed, handled, and distributed in accordance with laws and regulations of the Kentucky Department of Health. Any deviation from this standard shall be considered sufficient cause for cancellation of the contract.
 - c. Coolers/Refrigerators/Freezers must be stocked with clean, undamaged, and ready-to-serve products.
 - d. Products included in this proposal remain property of the respondent until sold to the end consumer (student). All unused, spoiled, or defective products shall be returned to respondent and credit shall be issued to the member.
 - e. The successful respondent must be equipped and able to deliver sufficient quantities as may be used in each school of the Kentucky School Systems and must be prepared to deliver additional quantities above normal use in emergencies and on short notice.

- f. As determined on a member-by-member basis, the successful respondent will supply and maintain milk coolers. Vendor supplied coolers must be restored to operation within twenty-four hours of a service request or replaced with a comparable cooler.
- g. The member may terminate the contract for any of the following reasons, or any other reason that a court would consider as sufficient for termination of the contract.
 - i. That the milk does not meet the standards prescribed above.
 - ii. That the service rendered as to deliveries, etc., is unsatisfactory.
 - iii. That the milk does not properly satisfy the end-customer, as may be evidenced by an unusual number of complaints or small sales, or any other valid indications that the milk does not properly satisfy the end-customer.
 - iv. That the successful respondent fails to carry out the specifications, conditions, or convenience and obligations made to the member.
- h. Milk must meet all current state and federal guidelines for butterfat content. Milk must meet the standards prescribed by the State Board of Health and the Kentucky School Systems Board of Health and must otherwise be satisfactory.

14. USDA TRANSITIONAL STANDARDS: Effective July 1, 2022, for participants in the National School Breakfast and National School Lunch Programs.

- a. MILK: Schools may offer flavored low-fat (1%) milk in addition to nonfat flavored milk and nonfat or low-fat unflavored milk to participants ages six and older.
- b. SODIUM: The weekly sodium limit for school lunch and breakfast will remain at the current level in SY 2022-2023. For school lunch, there will be a 10% decrease in the limit for SY 2023-2024.

15. FLUID MILK AND FLUID SUBSTITUES: Memo CACFP 17-2016, defines the nutrition requirements for fluid milk and fluid milk substitutes served in the Child and Adult Care Food Program (CACFP).

16. PRODUCT FRESHNESS: All products delivered to participating members must be fresh with a 10-day shelf life at time of delivery. Rotating stock to the members from other customers is prohibited.

17. ORDERS: It is the responsibility of drivers to calculate estimated quantities for future orders.

18. SUBCONTRACTORS: The use of subcontractors for product delivery requires the express approval of the member. Subcontractors must conform to all general and RFP specific terms and conditions herein. The successful respondent is solely accountable for all agents and subcontractors utilized and will be held responsible by KEDC for all work performed under this contract by any agent or subcontractor they employ.

19. PRODUCT SAFETY AND HACCP INFORMATION: The successful respondent shall provide upon request by any member, the most recent applicable MSDS information sheets for any products the respondent may deliver to said member. It is the respondent's responsibility to comply with all local, state, and federal regulations. Awarded respondent HACCP procedures are to be provided to members upon request.

20. **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. Respondents are expected to take immediate action to correct any situation in which product integrity is violated.
21. **BUY AMERICAN ACT:** The respondent will assist members in their efforts to abide by the Buy American Act. The Buy American provision was added to the National School Lunch Act (NSLA) by Section 104(d) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Public Law 105-336). Section 12(n) to the NSLA (42 USC 1760(n)), requiring school food authorities (SFAs) to purchase, to the maximum extent practicable, “domestic commodity or product”.

Domestic Commodity or Product is defined as an agricultural commodity that is produced in the United States and a food product that is processed in the United States using substantial agricultural commodities that are produced in the United States.

Substantial means that over 51 percent of the final processed product consists of agricultural commodities that were grown domestically.

Products from Guam, American Samoa, Virgin Islands, Puerto Rico, and the Northern Mariana Islands are allowed under this provision as territories of the United States.

The Buy American provision (7 CFR Part 210.21(d)) is one of the procurement standards SFAs must comply with when purchasing commercial food products served in the school meals programs.

Buy American: Schools participating in the federal school meal programs are required to purchase domestic commodities and products for school meals to the maximum extent practicable. Domestic commodity or product means an agricultural commodity that is produced in the US and a food product that is processed in the US substantially (at least 51 percent) using agricultural commodities that are produced in the US.

Federal regulations require that all foods purchased for the Child Nutrition Program be of domestic origin to the maximum extent practicable. While rare, two (2) exceptions may exist when: the product is not produced or manufactured in the US in sufficient, reasonable, and available quantities of a satisfactory quality, such as bananas and pineapple; and competitive proposals reveal the cost of a domestic product is significantly higher than a non-domestic product.

ALL products that are normally purchased by Distributor as non-domestic and proposed as part of this solicitation must be identified with the country of origin. The distributor shall outline their procedures to notify School when products are purchased as non-domestic. Any substitution of a non-domestic product for a domestic product (which was originally a part of the solicitation), must be approved, in writing, by the Director of School Nutrition, prior to the delivery of the product to the school. Any nondomestic

product delivered to the school, without the prior, written approval of the Director of School Nutrition, will be rejected.

The distributor must affirm their willingness to assert their best and reasonable efforts to ensure compliance with this federal rule.

The respondent will provide documentation to KEDC prior to award and to 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. Any substitution of a non-domestic product for a domestic product (which was originally a part of the solicitation), must be approved, in writing, by the Director of School Nutrition, prior to the delivery of the product to the school.

If the respondent feels the cost of the domestic product is significantly higher, they must list the price of the domestic product as well as the non-domestic product price on the bid worksheet. The decision to purchase domestic or non-domestic products will rest with the Child Nutrition Director of each participating member.

KEDC members reserve the right to return at the respondent'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.

22. 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)).
23. ADMINISTRATIVE FEE: The awarded respondent will pay an annual administrative fee of \$600.00 per member served under this contract. The administrative fee is payable upon award of contract. Remit the administrative fee payment to KEDC, 904 Rose Road, Ashland, KY 41102-7104. For your reference, KEDC's FEIN is 61-0659010.
24. ITEM SUBSTITUTION AND OUT-OF-STOCK BACK-ORDERS: No substitutions are allowed without prior written authorization from the member. Members must be notified if an item is out of stock, backordered, or if timely delivery cannot be made. It is an expectation that all individual awarded items are to be stocked items slotted at all distribution facilities servicing KEDC members. If an awarded respondent 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. All replacement items must meet the**

same nutritional profile of the out-of-stock item. The members shall be notified of out-of-stocks twenty-four (24) hours prior to delivery. The awarded respondent shall maintain a 97% average fill rate.

If the awarded respondent fails to deliver within the time specified, or within a reasonable time as interpreted by each member or fails to make replacements of rejected articles when so requested or demonstrates a continuous inability to secure the awarded item, the member at its sole discretion, may purchase a product of equal or greater quality from another source. On all such purchases, the awarded respondent 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 respondent. The awarded respondent's argument that an item could have been purchased at a lower price shall not have merit.

KEDC RESERVES THE RIGHT TO ASSESS A FINANCIAL PENALTY ON BEHALF OF THE MEMBER FOR FAILURE TO PROVIDE PRODUCTS THAT MEET THE REQUIREMENTS OF THE NATIONAL SCHOOL BREAKFAST PROGRAM AND/OR NATIONAL SCHOOL LUNCH PROGRAM.

The penalty shall be the greater of the cost of that day's reimbursable meals served at the effected sites or \$1,500.

25. DELIVERIES: The successful respondent will be expected to have each delivery checked by the appropriate personnel and to leave two (2) signed copies of the itemized delivery ticket with them. The delivery ticket must list any credits, shortages, errors, and/or damaged goods. NO SUBSTITUTIONS PERMITTED WITHOUT THE APPROVAL OF THE MEMBER. Respondent is expected to keep a reasonable stock of awarded items on hand. All copies of invoices and statements, by location, should be sent to the Member Business Office.

Products are to be rotated by the delivery person. Any out of date or unused product must be removed and credited to the purchasing member's account. Estimated quantities shall be calculated by the delivery driver for future orders. Unused products are to be collected by the successful respondent BEFORE ALL VACATION PERIODS.

Respondent should state the number of deliveries to be made to members during a month (where not specified) and day of week deliveries will be made for lunchroom managers to properly schedule delivery date requests on their Purchase Orders.

Deliveries shall be made at least TWICE PER WEEK to the individual location unless a different delivery schedule is negotiated between the contractor and the member. NO MINIMUM DELIVERY REQUIREMENTS ARE ALLOWED.

Deliveries shall be made into the location and placed in the proper storage at each site as needed and directed by the member. Acceptable delivery times are to be negotiated between the contractor and each participating member.

It is understood that deliveries are not to be made to schools when they are not in session (Election Day, Holidays, in-service days, etc.) with the exception of the opening of school. Calendars will be provided to the successful respondents to designate off-school days. When school is cancelled because of inclement

weather or other emergency the school system reserves the right to accept the delivery, authorize another acceptance signature, or to cancel the delivery.

All products or services procured from the awarded proposal are to be delivered free of freight charges (FOB destination).

The designated supplier(s) agrees to provide total requirements as listed herein, thereby minimizing occurrences when a member may have to seek other interim product sources. Failure to deliver 100% of the items on the core item list within 48 hours shall be considered default.

Drivers must be clean, of neat appearance, and professional.

26. DELIVERY CRATES/TRAYS: All vehicles, crates, and trays utilized to deliver products must be clean, in good working order, and compliant with all HACCP regulations. Crates/Trays used to deliver products must be picked up by the vendor within fifteen days of the date of delivery. Crates/Trays left at a member's site longer than fifteen days become property of the member and may be disposed of in any manner deemed necessary.
27. PAYMENTS: Each member shall be responsible for making payment to the awarded respondent. Note: normally, school district members pay bills only after approval from the Board of Education which meets monthly.
28. AUDITS:
 - a. KEDC reserves the right to make audits of a awarded respondent'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 the time of one-year contract extension if awarded.
 - iv. An unscheduled audit once during each one-year contract period upon appropriate notice given to awarded respondent.
 - b. The awarded respondent 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 KEDC and the awarded respondent.
 - d. The awarded respondent 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).
29. PRODUCT EVALUATION: Samples requested must be furnished free of expense to KEDC and or KEDC 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 respondent's expense. The right is reserved to mutilate or destroy any samples if considered necessary for testing purposes.

30. PROMPT PAYMENT DISCOUNT: Awarded respondent may provide a prompt payment percentage discount for invoice payments postmarked less than 30 days from the invoice date, and awarded respondent must provide a satisfactory explanation to KEDC of how this provision will be administered to enable KEDC to effectively monitor and verify the discounts, and to ensure that such discounts are returned to the members.

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.