

The Awarded Distributor must cooperate with the HPS Institutions that are SFAs in order to facilitate their compliance, and their monitoring of compliance, with this or future, or as amended, Buy American provision(s). This includes certification by the Awarded Distributor as to the percentage of U.S. content in domestic commodities or products supplied to SFAs. If the Awarded Distributor is unable or unwilling to make such certification or otherwise fails to comply with this Buy American provision, the SFAs will not purchase from the Awarded Distributor and may terminate their Individual Member/Participant Agreements with the Awarded Distributor. **By signing and submitting a proposal, the responding vendor certifies that the agricultural commodities and food products it proposes to supply to each SFA will be domestic commodities or products. In addition, the Awarded Distributor must provide each SFA with ongoing certification, on food products delivered, on invoices submitted and by other means as appropriate, (i) that agricultural commodities supplied to the SFA were produced in the United States, (ii) that food products supplied to the SFA were processed in the United States, and (iii) that the percentage of U.S. content, by weight or volume, in the food component of processed food products supplied to the SFA exceeds 51%. SFAs may also require the Awarded Distributor to certify the actual percentage of U.S. content, by weight or volume, in the food component of processed food products supplied to the SFAs.**

Exceptions to the foregoing Buy American provision are very limited; however, an alternative or exception may be approved by individual SFAs upon the vendor's request. To be considered for an alternative or exception, the request must be submitted in writing or by electronic transmission to the SFA, Attention: Food Service Director, a minimum of 1 day in advance of delivery. The request must include either:

- A. The alternative substitute(s) that are domestic and meet the required specifications, together with:
 - (i) Price of the domestic food alternative substitute(s); and
 - (ii) Availability of the domestic alternative substitute(s) in relation to the quantity ordered; or
- B. The reason for exception: limited/lack of availability or price (include price information):
 - (i) Price of the domestic food product; and
 - (ii) Price of the non-domestic product that meets the required specification of the domestic product.

11. Contract Work Hours and Safety Standards Act. Where applicable and in accordance with Appendix II to 2 CFR Part 200 ¶ (E), all contracts awarded by a non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C.3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1.5 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. **Agreed**

Please See Tab 1 GFS Exceptions to RFP for additional legal exceptions

SECTION 5. INSTRUCTIONS AND INFORMATION FOR RESPONDING VENDORS.

a. Any firm interested in submitting a proposal to HPS must review and complete the requested information and submit its proposal in accordance with the terms and conditions of this Request for Proposal. Proposals in response to this RFP must be received at the HPS office, 3275 N. M-37 Highway, P.O. Box 247 Middleville, Michigan 49333 - Attention: Tori Mascho, no later than 5:00 PM EDT on April 22, 2024.

b. Pricing.

1. **Pricing Mechanisms, Methods.** Responding vendors must complete the Proposal of Material-Specifications List spreadsheet attached as **Exhibit C** with prices as of July 1, 2024. Responding vendors are required to use USDA recognized pricing mechanisms. That is, pricing for commercial Products must be based on either “firm price” or “cost plus a fixed fee.” Commodity Product pricing must be either NOI (if permitted by the applicable State Department of Education or other State agency having jurisdiction), modified fee for service, Closed Sku NOI (CNOI), or Rebate. “Cost plus a percentage of cost” is not permitted. Any proposal that is based on “cost plus a percentage of cost” will be rejected. HPS will be soliciting proposals from multiple distributors to determine the most responsive and responsible responding vendor of this solicitation.

“Cost” is defined as Awarded Distributor’s invoice amount from the supplier, plus overhead/storage, inbound freight, minus customer allowance and any other “off” invoice allowances. “Fixed Fee” is defined as the difference between Cost and the selling price to HPS SFAs. Fixed Fees shall remain firm for the duration of the Master Group Agreement. Pricing submitted for all Products will be net price, F.O.B. destination (HPS Institution), and stated as “firm price” or “cost plus a fixed fee.” The unit price offered should contain two points (.00) beyond the decimal. The extended price must be rounded to the nearest whole cent (5 or greater will be rounded up and 4.9 or less will be rounded down). The Awarded Distributor must assure only allowable costs are submitted for reimbursement and must also identify the amount of each discount, rebate, and other applicable credit on invoices presented for payment at least monthly. Awarded Distributor must maintain documentation of costs and discounts, rebates, and other applicable credits, and must furnish such documentation upon request of HPS, the applicable State Department of Education or other State agency having jurisdiction, or the USDA. Individual product rebates may be filed either by the SFA or by Awarded Distributor but will be paid only to the SFA for credit to its Nonprofit School Food Service Account. The Awarded Distributor will provide the tracking report on behalf of HPS, if requested. HPS expects firm fixed price for contracts secured by the Awarded Distributor on behalf of the HPS Institutions. **See Tab 10, Cost Definition**

2. **Pre-Award Audit.** HPS reserves the right to audit all pricing submissions prior to award of contract. **Understood**

A. Prices quoted must be the NET PRICE that HPS Institutions will pay, F.O.B. destination. USDA Foods discounts will only be applied on the approved manufacturers (listed on the instructions tab of the **Exhibit C** spreadsheet).

B. Each responding vendor must submit, with the proposal, a list of all Products that are a firm price for the entire school year, calendar year, or specified period of time.

c. **Firm Pricing.**

1. Firm Pricing; Adjustments. The Proposal of Material - Specification List attached as **Exhibit C** represents the high-volume Products purchased by HPS Institutions. The Products listed on the Proposal of Material – Specification List, must be quoted firm against any increase (firm priced) at minimum for each four month price protection period, (unless the responding vendor offers the price protection period for a longer period). The four month price protection periods are July 1 – October 31; November 1 – February 28/29; and March 1 – June 30, commencing on July 1, 2024. All prices must be quoted F.O.B. HPS Institution’s place of business, unless otherwise noted on item #13 of the Terms & Conditions informational sheet and accepted by HPS in writing. After the initial four month period, (unless otherwise stated) all successive price increase requests must be submitted to the HPS office a minimum of 30 days before the proposed effective date (i.e., the first day of the next four month price protection period) and are subject to the approval of HPS prior to implementation. The HPS School Food Purchasing Advisory Committee will evaluate any requested price increase by considering relevant factors such as any changes in the Bureau of Labor Statistics Consumer Price Index for All Urban Consumers: Food Away from Home in U.S. City Average (Series ID CUUR0000SEFV) (“CPI”). Allowable changes will be determined by the change in the published CPI verse the published CPI for the number of months in price protection period (example: for price protection period July 1 through October 31st if the most current published CPI is September, the acceptable change will be the difference between the June CPI and the September CPI). **The Committee will not approve any aggregate price increase it determines would constitute a Material Change to the contract.** If manufacturers’ price increases only pertain to a specified geographic area, the Awarded Distributor will only submit the price changes for the specified geographic area. HPS reserves the right to bill the Awarded Distributor for costs incurred to notify HPS Institutions of any price increase that was not part of the originally agreed upon pricing term. In the event of a general market decline for any Product after the initial four (4) month period, either (1) the Awarded Distributor may reduce the price(s) to HPS Institutions to a level reflecting such general decline, or (2) HPS may renegotiate or terminate the Master Group Agreement. **Understood**

2. Other Group Purchasing Contracts. Responding vendors should note that HPS already has entered into group purchasing contracts for certain items included in the “Separate Contracts” tab of the Proposal of Material – Specification List attached as **Exhibit C**. Those items are also covered by this RFP, and the Awarded Distributor will be required to stock those items or the manufacturer equivalent in the case of private label. Please provide your fixed fee to deliver the items to the HPS institutions. The items in **Exhibit C** will be included in the overall HPS bid and **not** be considered off bid items. **Understood**

d. **Market Sensitive.** All Products listed on the Proposal of Material – Specification List attached as **Exhibit C**, that are “market sensitive” high volume items (e.g., produce and dairy) may be priced using the “cost plus a Fixed Fee” mechanism. **Understood**

e. **Other Product Pricing.** For all other Products that the responding vendor may provide, the vendor must provide a detailed description of the pricing mechanism used to determine the "non-firm priced items" net pricing. The mechanism must provide net pricing that reflects the competitive market and is available to all HPS Institutions. The responding vendor's response must include a Fixed Fee per case schedule for all items not listed on the Proposal of Material. **See Tab 11, Off Bid Pricing Structure**

f. **Cost Reimbursable Contract Requirements.** The contract will include the provisions required by 7 CFR 210.21(f)(1), as more specifically described in Section 4.f.3 of the General Conditions, above. **Understood**

g. **USDA** described above that are included in the firm Commodity price. If applicable, each responding vendor must provide the distribution cost (i.e., Fixed Fee per case) for the Closed Sku NOI (CNOI) USDA Foods Products described above that are included in the firm Commodity price. If applicable, each responding vendor must provide the distribution cost (i.e., Fixed Fee per case) for the distribution of DoD products to the HPS Institutions. If applicable, **Foods Pricing.** Each responding vendor must outline its capabilities to distribute USDA Foods Products, including Processed, Non-Processed, DoD, and any USDA approved pilot programs to the HPS Institutions, and must quote on **Exhibit C** either the NOI Price (if permitted by the applicable State Department of Education or other State agency having jurisdiction), modified fee for service, or Closed Sku NOI (CNOI) for each USDA Foods Product. If applicable, each responding vendor must provide the cost structure (i.e., Fixed Fee per case) for the delivered distribution cost for any non-processed USDA Foods Products. If applicable, each responding vendor must provide the distribution cost (i.e., Fixed Fee per case) for the modified fee-for-service USDA Foods Products. If applicable, each responding vendor must provide the distribution cost (i.e., Fixed Fee per case) for the Closed SKU NOI USDA Foods Products. Each responding vendor must provide the distribution cost (i.e., fixed fee per case) for any USDA approved pilot programs to the HPS Institutions. Each responding vendor must provide a sample USDA Foods Manufacturer Tracking Report. **Understood, See Tab 12, USDA Foods Capabilities, USDA Tracking Report, USDA Foods Pricing Structure**

h. **Firm Offers.** All proposals will be considered firm offers to sell the Products to HPS Institutions that will remain open to acceptance or rejection for a period of ninety (90) days from the closing time and date shown above for submittal of proposals. Any responding vendor may withdraw its proposal at any time before the stated closing time and date. Due to FOIA and other disclosure laws and regulations that apply to certain SFAs and other HPS Institutions, proposals that are submitted in response to this RFP may be subject to disclosure as matters of public record. **Agreed**

i. **Sales Volume; Separate Contract Items.** The sales volume figures shown on **Exhibit C** and volume projections stated elsewhere in this RFP are intended for the responding vendor's own use as an aid in determining approximate quantities. HPS makes no guarantee, express or implied, as to the exact quantities of Products that will be purchased by HPS Institutions, and the Awarded Distributor will be required to honor its pricing if quantities vary from **Exhibit C** or from projections stated elsewhere in this RFP. Responding vendors should note that HPS already has entered into group purchasing contracts for certain items included in the Proposal of Material – Specification List attached as **Exhibit C** (see Section 5.c.2 above). **Understood**

j. **Data Requests.** Each responding vendor must furnish all data, technical literature and samples that HPS requests in connection with its evaluation of the vendor's proposal. **Understood**