

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.

12. Rights to Inventions Made Under a Contract or Agreement. In accordance with Appendix II to 2 CFR Part 200 ¶ (F), if a Federal award meets the definition of “funding agreement” under 37 CFR §401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small

business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements or 37 CFR Part 401, “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.

13. Davis-Bacon Act, as amended. In accordance with Appendix II to 2 CFR Part 200 ¶ (D), all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144 and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”) In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The school district must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The school district must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work financed in Whole or Part by Loans or Grants from the United States”). The act provides that each contractor or sub recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The school district must report all suspected or reported violations to the Federal awarding agency.

14. Small/Minority/Women’s/Labor Surplus Area Businesses. In accordance with 2 CFR § 200.321, the Awarded Distributor must take all necessary affirmative steps to assure that minority businesses, women’s businesses enterprises, and labor surplus area firms are used when possible. Affirmative steps must include: (a) Placing qualified small and minority businesses and women’s business enterprises on solicitation lists; (b) Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources; (c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women’s business enterprises; (d) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women’s business enterprises; and (e) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

g. **Nondiscrimination.** The Awarded Distributor must not discriminate against any employee or applicant for employment relating to the Master Group Agreement or any Individual Member/Participant Agreement with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee’s or applicant’s race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law (“**Protected Characteristics**”). The Awarded Distributor certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the

Protected Characteristics in the provision of Products or services. Breach of this paragraph may be regarded as a material breach of the Master Group Agreement.

h. **Notices.** Any notices permitted or required to be given under the Master Group Agreement will be deemed given or made (a) upon personal delivery to the party to whom addressed, (b) on the day of delivery to a nationally recognized overnight courier service, (c) three days following deposit in the United States mail, certified, return receipt requested, or (d) upon sending by verifiable electronic mail. Notices permitted or required to be given under the Master Group Agreement to Awarded Distributor must be addressed to Awarded Distributor's address or email address as set forth in its proposal, and to HPS must be addressed to HPS's address as set forth in this RFP (attention: Tori Mascho) or to tmascho@hpsnet.com. A party may specify a different address by notice given in accordance with the terms of this Section.

i. **Incorporation of Documents.** The provisions of this RFP (including without limitation these General Conditions and all appendices and exhibits, all of which are incorporated into this RFP by reference), the attached Terms and Conditions Informational Sheet, and the Awarded Distributor's proposal will be considered part of the Master Group Agreement entered into between HPS and the Awarded Distributor. In case of any conflict or inconsistency among the foregoing, the Master Group Agreement will control, followed by the provisions of this RFP, the Terms and Conditions Informational Sheet, and then the Awarded Distributor's proposal, in descending order of priority.

j. **Governing Law.** This Request for Proposal, the Master Group Agreement, and any Individual Member/Participant Agreement will be construed and enforced in accordance with the laws of the state of Michigan, without regard to conflict of law principles.

k. **No Assignment.** The Master Group Agreement may not be assigned by the Awarded Distributor without the prior written consent of HPS.

l. **Product Requirements.**

1. **General Requirements:** All Products must conform to the minimum requirements of federal and state regulations. These requirements include, but are not limited to cleanliness, safety, weights, fill of containers, drained weights, and contamination.

A. All food Products supplied by Awarded Distributor will comply with standards of identity, quality, and fill and drained weights as described in relevant federal and state regulations.

B. All foods, especially temperature-controlled foods, will be handled according to the latest federal and state food codes that govern the Products.

C. With respect to any Products that are misrepresented, the supplier whose name and address appear on the package is the responsible party. Awarded Distributor is expected to take immediate action to correct any situation in which Product integrity is violated.

D. In the case of quality disputes, the manufacturer may be required to provide an independent or third-party laboratory analysis to justify the grade.