

# Bay Haven Charter Academy, Inc. Food Services INVITATION FOR BID

Bid Issue Date	April 30, 2021
Final Date for Written Questions	May 5, 2021
Bid Due Date and Time	May 20, 2021 @ 10:00 AM
Bid Opening Date and Time	May 20, 2021 @ 10:30 AM
Bid Opening Location	Bay Haven Charter Academy
Award Date	May 21, 2021
Installation	

BID FOR	NAME OF PRODUCT	LABEL SEALED ENVELOPE
X	Food	"IFB FOOD"
X	Paper, Chemical	"IFB PAPER AND CHEMICAL"
	Equipment	"IFB FS EQUIPMENT"
	Bread	"IFB BREAD"
	Milk	"IFB MILK"
	Kitchen Supplies	"IFB KITCHEN SUPPLIES"

In accordance with Federal civil rights law and U.S Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, religious creed, disability, age, political beliefs, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

Persons with disabilities who require alternative means of communication for the program information (e.g. Braille, large -print, audio tape, American Sign Language, etc), should contact the Agency (State or local) where they applied for benefits. In-dividuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at 800-877-8339. Additionally, program information may be made available in languages other than English.

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, (AD-3027) found online at: [How to File a Complaint](#), and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call 866-632-9992. Submit your completed form or letter to USDA by:

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| <p>1) Mail: U.S. Department of Agriculture<br/>Office of the Assistant Secretary for Civil Rights<br/>1400 Independence Avenue, SW<br/>Washington, DC 20250-9410</p> | <p>2) Fax: 202-690-7442</p> <p>3) Email: <a href="mailto:program.intake@usda.gov">program.intake@usda.gov</a></p> |
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This institution is an equal opportunity provider.

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## DEFINITIONS

**Addendum** - A change, addition, alteration, correction or revision to a bid or a contract document.

**Bidder** - A firm, individual, or corporation submitting a bid in response to this IFB.

**Bid Unit** - The unit designation which shall be applicable to all pricing offered for bid evaluation purposes. Unit cost, freight, fixed fee, estimated usage, and the extended cost shall be stated in terms of the designated bid unit. In some instances, the bid unit and the package unit may be the same.

**BHCA, Inc.** - Bay Haven Charter Academy, Inc.

**Contractor** - The provider of the goods and/or services under the Contract.

**Contract Documents** - Consist of the Agreement between the Food Services Department and the Contractor, terms and conditions, schedule, specifications, drawings, and all addenda, errata, and bulletins issued prior to execution of the contract, other documents listed in the Agreement, and modifications issued after execution of the contract.

**Damaged Item** - Refers to an item that has sustained damage that would allow spillage from the original container, a loss or disfigurement of a label that would hinder identification, contaminated package that would affect the content of that package or any other happening that would affect the quality and/or quantity of the original item.

**Dry Food Product** - A dry product that does NOT require freezing or refrigeration.

**Invitation For Bid (IFB)** - A type of solicitation document used in competitive sealed bidding, where the primary consideration is cost and the expectation is that competitive bids will be received and an acceptance will be made to the responsive and responsible Bidder whose bid is lowest in price and meets the specifications of the bid. An IFB is a formal method of procurement that uses sealed bidding and results in a fixed price contract with or without adjustment factors. The IFB must be publicly advertised and bids shall be solicited from an adequate number of suppliers, providing them with sufficient time to respond prior to the date set for opening the bids.

**Pack Size** - With some items the bid unit does not represent a package configuration by which the item would normally be purchased. In such instances, the Bidder will be required to bid according to the designated bid unit and also state how the product will be packaged and to provide a cost for the purchase unit.

**Purchase Unit** - The package configuration (case, carton, box, bag, etc) by which the product would normally be sold. This shall also mean packaging being referred to when the term "case price" is applicable.

**Solicitation** - A document used by Food Service to acquire goods and/or services. Solicitations must incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Solicitations must also identify all the requirements which the Offerors or Bidders must fulfill and all other factors to be used in evaluating the bids or proposals.

**SECTION 1  
TRANSMITTAL PAGE**

The Bay Haven Charter Academy, Inc. Food Service Department (BHCA) is requesting sealed bids for Food Service for Food/Grocery items. Bids are due by the date and time shown on the Invitation to Bid. Bids will be opened at the date, time, and location shown on the Invitation to Bid.

Sealed Bids shall be mailed or delivered to: Bay Haven Charter Academy, Inc., Food Service Department, 2501 Hawks Landing Blvd, Panama City, FL 32405.

Questions regarding this Invitation for Bid shall be directed to: Kelly Phelan, Director of Ancillary Services, email: [phelak@bayhaven.org](mailto:phelak@bayhaven.org); telephone: 850-814-9394.

**INTENT**

- a) It shall be the intent and purpose of this Invitation for Bid (IFB) to cover the terms and conditions under which a successful Bidder shall be responsible to supply and deliver products to the BHCA, Inc. Food Service through sealed bids.
- b) **BHCA, Inc Food Services is seeking to identify and select one (1) vendor to provide the items as listed in the attached list Attachment B. The bid may be awarded in entirety or by line item, whatever is deemed in the best interest of the schools represented.** The selected vendor shall provide products in accordance with the Standard Terms and Conditions, Special Terms and Conditions, the IFB and any applicable Addenda.
- c) BHCA, Inc. Food Services reserves the right to accept or reject any or all bids, or to accept any part of a bid without accepting the whole thereof, or to accept such bid as they deem to be in the best interest of BHCA, Inc.

**I. CONTRACT TIME PERIOD**

- a) **Initial Term** - The initial term of this contract, which results from the award of this IFB, shall commence and terminate on the dates shown on the INVITATION FOR BID.
- b) **Renewal Option** - This contract may be renewed for up to four (4) one-year terms at the same terms and conditions by mutual agreement of both parties in written form.

**II. BID SUBMISSION PROCEDURES**

*BHCA, Inc. is not liable for any costs incurred by Bidders prior to issuance of or entering into a contract. Costs associated with developing the bid, preparing for oral presentations, and any other expenses incurred by the Bidder in responding to the IFB are entirely the responsibility of the Bidder, and shall not be reimbursed in any manner by the Food Service Program.*

- a) Bids must be enclosed in a sealed envelope. The outside of the envelope shall be clearly marked as shown on page #1 of this document entitled **"IFB-FOOD/GROCERY ITEMS BHCA, INC. FOOD SERVICE"**.
- b) Bids must be received by the Food Service Department no later than the date shown on page #1 of this document entitled INVITATION FOR BID.
- c) Late bids shall not be accepted. BHCA, Inc. Food Services shall not be responsible for late receipt of bids. Bids must be mailed or delivered to BHCA, Inc. Food Service. Emailed and faxed bids are not acceptable and will not be considered for SEALED BIDS. **An electronic copy of the bid Quote Sheet along with any alternate or required information must be included on a flash drive inside the sealed bid package.** Bids must be mailed or delivered to: Bay Haven Charter Academy, Food Service Department, 2501 Hawks Landing Blvd., Panama City, FL 32405.
- d) If the Bidder submits bid documents with informalities, errors, or omissions such as, but not limited to, non-conforming bid security, non-conforming non collusion affidavit or samples, or fails to properly execute and seal the said documents the Bidder, in the BHCA, Inc sole discretion, may be given 72 hours from the time of the bid opening in which to provide such information to BHCA, Inc. Food Service.
- e) BHCA, Inc. has the right to waive any and all informalities.

### III. BID OPENING DATE/TIME/PLACE

Bids will be opened at the date and time shown below: May 4, 2021 at 10:00 AM at Bay Haven Charter Academy Food Service Offices, 2501 Hawks Landing Blvd, Panama City, FL 32401.

### IV. AWARD DETERMINATION STATEMENT

- a) This IFB is intended to be awarded to a single vendor and to result in a firm fixed price contract. All bid prices shall remain firm for the entire contract period.
- b) BHCA, Inc. will award the contract to the lowest responsive and responsible Bidder meeting all terms, conditions, and specifications of the IFB , **with price as the primary factor**, within approximately thirty (30) days of the opening of the bids. Submitted bid pricing shall remain valid during this thirty day period. BHCA, Inc. reserves the right, in its sole discretion to accept or reject any and all bids or parts thereof.
- c) An official letter of acceptance will be forwarded by BHCA, Inc. to the successful Bidder after bid selection and prior to contract award.
- d) Upon acceptance and award of a vendor's bid, the contract between the Bidder and BHCA, Inc. shall be drafted from (a) the IFB and addenda, (b) the selected bid response to the IFB by the Bidder and any attachments thereto, and © all written communications between BHCA and the Bidder concerning the transactions. The contract shall constitute the entire and only agreement and shall supersede all prior negotiations, commitments, understandings, or agreements, whether written or oral.

**V. SYSTEM CONTACT INFORMATION**

- a) The Invitation for Bid is issued by BHCA, Inc. Food Services. All inquiries, clarifications or interpretations regarding the IFB should be directed by email to: [phelak@bayhaven.org](mailto:phelak@bayhaven.org).
- b) Responses to inquiries that affect the content of this IFB will be provided in writing to all recipients of the IFB. It is the responsibility of each Bidder to inquire about any aspect of the IFB that is not fully understood or is believed to be susceptible to more than one interpretation. BHCA, Inc. will accept only written inquiries regarding this IFB until the date shown on page #1 of this document entitled INVITATION TO BID, in order for a reply to reach all Bidders before the bid closes and to give bidders ample time to respond to any Addenda. Any information given to a prospective Bidder concerning and IFB will be furnished to all prospective Bidders as an Addendum to the IFB if such information is necessary or if the lack of such information would be prejudicial to uninformed Bidders.

**VI. VENDOR CONTACT INFORMATION**

Vendor Company Name	
Street Address	
City, State, Zip	
Contact Person	
Telephone	
Email Address	

**SECTION 2**  
**STANDARD TERMS AND CONDITIONS**

*This contract between BHCA, Inc. and the Vendor shall be governed in accordance with the laws of the State of Florida and all applicable Federal regulations.*

**I. LOBBYING CERTIFICATE (FOR BIDS OVER \$100K)**

Per CFR 7.3018 - A Lobbying Certification and Disclosure must be completed for all bids \$100,000 and over. Please see and complete Attachment E, Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence and officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

**II. DEBARMENT AND SUSPENSION VERIFICATION (for bids over \$25K)**

Institutions shall solicit offers from, award contracts to, and consent to subcontracts with responsible contractors and/or principals only. The serious nature of debarment and suspension requires that sanctions be imposed only in the public interest for the Government's protection and not for purposes of punishment. Institutions shall impose debarment or suspension to protect the Government's interest and only for the causes and in accordance with the procedures set forth in 2 CFR 200.213.

The Contractor certifies that the Contractor and/or any of its subcontractors or principals have not been debarred, suspended, or declared ineligible by any agency of the State of Florida or any agency of the Federal government or as defined in the 2 CFR 200.213 which states "Non-federal entities are subject to the nonprocurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities." The Contractor will immediately notify the School Food Authority if the Contractor is debarred or placed on the Consolidation List of Debarred, Suspended, and Ineligible Contractors by a federal entity. See Attachment F.

By signing this agreement, the Contractor is testifying that they are not debarred, suspended or have any ineligible or voluntary exclusions with the U.S. Department of Agriculture or any other Federal or State agency. All responses will be verified. Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see 2 CFR 180.220) must be made to parties listed on the governmentwide 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." SAM Exclusions contain the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

### **III. BUY AMERICAN STATEMENT (Food only)**

Contractor must comply with the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Buy American Act - 7 CFR 210.21) which requires schools and institutions participating in the National School Lunch Program (NSLP) and the School Breakfast Program (SBP) in the contiguous United States to purchase, to maximum extent practicable, domestic commodities or products for use in meals served under the NSLP and SBP. By American - (1) Definition of domestic commodity or product. In this paragraph, the term 'domestic commodity or product' means (i) An agricultural commodity that is produced in the United States; and (ii) A food product that is processed in the United States substantially using agricultural commodities that are produced in the United States. Substantial means over 51% 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)0 is one of the procurement standards SFAs must comply with when purchasing commercial food products served in the school meals programs. Documentation must be received that requests (1) Consideration on the use of domestic alternative foods before approving and exception and (2) The use of non-domestic food exception when competition reveals the cost of domestic food is significantly higher than non-domestic food and (3) The use of non-domestic alternative food due to the domestic good not produced or manufactured in sufficient and reasonable available quantities of a satisfactory quality.

### **IV. REMEDY FOR NON-PERFORMANCE//TERMINATION OF CONTRACT**

**(a) Immediate Termination** - This contract will terminate immediately and absolutely if BHCA, Inc. determines that adequate funds are not appropriated or granted or funds are de-appropriated such that BHCA, Inc. cannot fulfill its obligations under the Contract. Furthermore, BHCA, Inc. may terminate the Contract for any one or more of the following reasons effective immediately without advance notice:

- (i) in the event the Contract of required to be certified or licensed as a condition precedent to providing goods and services, the revocation or loss of such license or certification may result in immediate termination of the Contract effective as of the date on which the license or certification is no longer in effect;
- (ii) BHCA, Inc. determines that the actions, or failure to act, of the Contractor, its agents, employees or subcontractors have caused or reasonable could cause, life, health or safety to be jeopardized;
- (iii) The Contractor fails to comply with confidentiality laws or provisions; and/or
- (iv) The Contractor furnished any statement, representation or certification in connection with the Contract or the bidding process, which is materially false, deceptive, incorrect or incomplete.

**(b) Termination for Cause** - All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement. The occurrence of any one or more of the

following events shall constitute cause for BHCA, Inc. to declare the Contractor in default of its obligations under the Contract:

- (i) The Contractor fails to deliver or has delivered nonconforming goods or services or fails to perform, to BHCA, Inc. satisfaction, any material requirement of the Contract or is in violation of a material provision of the Contract, including, but without limitation, the express warranties made by the Contractor;
- (ii) BHCA, Inc. determines that satisfactory performance of the Contract is substantially endangered or that a default is likely to occur;
- (iii) The Contractor fails to make substantial and timely progress toward performance of the Contract;
- (iv) The Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Contractor terminates or suspends its business; or BHCA, Inc. reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law.
- (v) The Contractor has failed to comply with applicable federal state and local laws, rules, ordinances, regulations, and orders when performing within the scope of the Contract;
- (vi) The Contractor has engaged in conduct that has or may expose BHCA, Inc. or the State to liability, as determined in BHCA's sole discretion; or
- (vii) The Contractor has infringed any patent, trademark, copyright, trade dress or any other intellectual property rights of BHCA, Inc., the state, or a third party.

**(c) Notice of Default** - If there is a default event caused by the Contractor; BHCA, Inc. shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied within a period of time specified in the BHCA's written notice to the Contractor. If the breach or noncompliance is not remedied within the period of time specified in the written notice, BHCA, Inc may:

- (i) Immediately terminate the Contract without additional written notice; and/or
- (ii) Procure substitute goods or services from another source and charge the difference between the Contract and the substitute contract to the defaulting Contractor, and/or,
- (iii) Enforce the terms and conditions of the Contract and seek any legal or equitable remedies.

**(d) Termination upon Notice** - Following thirty (30) days' written notice, BHCA, Inc. may terminate the Contract in whole or in part without the payment of any penalty or incurring any further obligation to the Contractor. Following termination upon notice, the Contractor shall be entitled to compensation, upon submission of invoices and proper proof of claim, for goods and services provided under the Contract to BHCA, Inc. up to and including date of termination.

**(e) Termination Due to Change in Law** - BHCA, Inc. shall have the right to terminate this Contract without penalty by giving thirty (30) days' written notice to the Contractor as a result of the following;

(i) BHCA, Inc.'s authorization to operate is withdrawn or there is a material alteration in the programs administered by BHCA, Inc.; and/or

(ii) BHCA, Inc.'s duties are substantially modified.

**(f) Payment Limitation in Event of Termination** - In the event of termination of the Contract for any reason by BHCA, Inc, the SFA shall pay only those amounts, if any, due and owing to the Contractor for goods and services actually rendered up to and including the date of termination of the Contract and for which BHCA, Inc. is obligated to pay pursuant to the Contract or Purchase instrument. Payment will be made only upon submission of invoices and proper proof of the Contractor's claim. The provision in no way limits the remedies available to BHCA, Inc. under the Contract in the event of termination. BHCA, Inc shall not be liable for any costs incurred by the Contractor in its performance of the Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Contract.

**(g) The Contractor's Termination Duties** - Upon receipt of notice of termination or upon request of BHCA, Inc., the Contractor shall:

(i) Cease work under the Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the Contract, including, without limitation, results accomplished, conclusions wresting there from, and any other matters BHCA, Inc. may require;

(ii) Immediately cease using and return to BHCA, Inc., any personal property or materials, whether tangible or intangible, provided by BHCA, Inc. to the Contractor;

(iii) Comply with BHCA's instructions for the timely transfer of any active files and work product by the Contractor under the Contract;

(iv) Cooperate in good faith with BHCA, Inc., its employees, agents, and contractors during the transition period between the notification of termination and the substitution of any replacement contractor; and

(v) Immediately return to BHCA, Inc. any payments made by BHCA, Inc. for goods and services that were not delivered or rendered by the Contractor.

## **V. HUB STATEMENT**

It is the intent of BHCA, Inc. to provide maximum practicable opportunities in its solicitations to minority firms, women's business enterprises and labor surplus area firms. Small businesses, woman and minority-owned business sources will not be given unfair advantage when evaluating competitive purchases i.e. small purchase procedures, sealed bids, competitive proposals, or noncompetitive proposals (2 CFR 200.321).

Positive efforts include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

- (2) Assuring that small and minority business, and women's business enterprises are solicited whenever they are potential sources;
- (3) 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;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises.
- (5) 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; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) and (5) of this section.

## **VI. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE STATEMENT (for bids over \$10K)**

In accordance with Federal Law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age or disability. To file a complaint of discrimination, write USDA, Director, Office of Adjudication, 1400 Independence Avenue, SW, Washington, DC, 20250-9410 or call toll free 866-632-9992. Individuals who are hearing impaired or have speech disabilities may contact USDA through the Federal Relay Service at 800-877-8339; or 800-845-6136 (Spanish). USDA is an equal opportunity provider and employer.

(Equal Employment Opportunity.. 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, 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.")

## **VII. ENERGY POLICY AND CONSERVATION ACT STATEMENT**

Compliance with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163, 89 Stat.871)

## **VIII. CLEAN AIR/CLEAN WATER STATEMENT (for bids over \$100K)**

Compliance with applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857 (h) Clean Air and Water Certification. Contractor certifies that none of the facilities it uses to produce goods provided under the Contract are on the Environmental Protection Authority (EPA) List of Violating Facilities. Contractor will immediately notify BHCA, Inc. of the receipt of any communication indicating that any of Contractor's

facilities are under consideration to be listed on the EPA List of Violating Facilities. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

## **IX. CIVIL RIGHTS STATEMENT AND ASSURANCE**

“The program applicant hereby agrees that it will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq); all provisions required by the implementing regulations of the Department of Agriculture, Department of Justice Enforcement Guidelines, 28 CFR Part 50.3 and 42 and FNS directives and guidelines, the effect that, no person shall, on the grounds of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied benefits of, or otherwise be subject to discrimination under any program or activity for which the program applicant receives Federal financial assistance from FNS; and hereby gives assurance that it will immediately take measures necessary to effectuate this agreement.”

### **Non-discrimination Statement:**

In accordance with Federal civil rights law and U.S Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, sex, religious creed, disability, age, political beliefs, or reprisal or retaliation for prior civil rights activity in any program or activity conducted or funded by USDA.

Persons with disabilities who require alternative means of communication for the program information (e.g. Braille, large -print, audio tape, American Sign Language, etc), should contact the Agency (State or local) where they applied for benefits. Individuals who are deaf, hard of hearing or have speech disabilities may contact USDA through the Federal Relay Service at 800-877-8339. Additionally, program information may be made available in languages other than English.

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, (AD-3027) found online at: How to File a Complaint, and at any USDA office, or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call 866-632-9992. Submit your completed form or letter to USDA by: (1) Mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9992; (2) Fax: 202-690-7442; or Email: [program.intake@usda.gov](mailto:program.intake@usda.gov). This institution is an equal opportunity provider.

In accordance with Federal Law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age and disability. To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call 202-720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

## **X. RECORD RETENTION AND ACCESS CLAUSE**

The contractor shall maintain books, records, and documents in accordance with generally accepted accounting principles and procedures and which sufficiently and properly document and calculate all charges billed to BHCA, Inc. throughout the term of this Contract for a period of at least five (5) years following the date of final payment or completion of any required audit, whichever is later. Records to be maintained include both financial records and service records.

The Contractor shall permit the Auditor of the State of Florida or any authorized representative of BHCA, Inc., and where federal funds are involved, the Comptroller General of the United States, or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices, or payments or any other documentation or materials pertaining to the Contract, wherever such records may be located during normal business hours. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records. If an audit discloses incorrect billings or improprieties, the State and/or BHCA, Inc. reserves the right to charge the Contractor for the cost of the audit and appropriate reimbursement. Evidence of criminal conduct will be turned over to the proper authorities.

## **XI. BID PROTEST PROCEDURES**

- a) Any protest shall be in writing and shall be delivered to BHCA, Inc. human resource department . A protest of solicitation shall be received by the named individual before the offer due date. The protest shall be filed within ten (10) days from the award notice and shall include:
  - i) The name, address and telephone of the protestor;
  - ii) The signature of the protestor or an authorized representative of the protestor;
  - iii) Identification of the purchasing agency and the solicitation or contract number;
  - iv) A detailed statement of the legal and factual grounds of the protest including copies of relevant documents;
  - v) The form of relief requested.
- b) A written response to the protest will be made within thirty (30) days from receipt of the protest and all items indicated above.
- c) BHCA, Inc. shall in all instances disclose information regarding protests to the State Agency.

## **XII. NON-COLLUSION STATEMENT**

"I certify that this bid is made without prior understanding, agreement or connection with any corporation, firm or person submitting a bid for the same materials, supplies, or equipment, and is in all respect fair and without collusion or fraud. I understand that collusive bidding is a violation of State and Federal law and can result in fines, prison sentences, and civil damage awards. I agree to abide by all conditions of this bid and certify that I am authorized to sign this bid."

## **XIII. CODE OF CONDUCT**

- I. The following conduct will be expected from all persons who are engaged in the procurement process that uses NSLP funds including award, administration of contracts, and receipt of products. No employee, officer, or agent of BHCA, Inc. shall participate in selection or in award or administration of a contract supported by NSLP funds if conflict of interest, real or apparent, would be involved. Conflicts of interest arise when one of the following has a financial or other interest in the firm selected for the award:

The employee, officer, or agent;

Any member of his/her immediate family;

His or her partner;

An organization which employs or is about to employ one of the above.

Further, the employees, officers, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to sub-agreements; and the purchase of any food or service from a contractor for individual use is prohibited. ; and the removal of any food, supplies, equipment, or school property, such as records, recipe books, supplies and the like is prohibited; and outside sale of such items as used oil, empty cans and the like will be sold by contract between BHCA, Inc and an outside agency. Individual sales by any school person to an outside agency or other school person is prohibited.

Failure of any employee, officer, or agent to abide by the above stated code could result in a fine, suspension, or both, or dismissal.

BHCA, Inc. will not be responsible for any other explanation or interpretation which anyone presumes to make on behalf of BHCA, Inc.

## **XIV. DUTY TO EXAMINE**

It is the responsibility of each bidder to examine the entire solicitation, seek clarification in writing, and check its offer for accuracy before submitting the offer. Lack of care in preparing an offer shall not be grounds for withdrawing the offer after the offer due date and time nor shall it give rise to any contract claim.

## **XV. EXCEPTIONS TO TERMS AND CONDITIONS**

A bid that takes exception to a material requirement of any part of this solicitation, including a material term and condition, shall be rejected.

## **SECTION 3 SPECIAL TERMS AND CONDITIONS**

### **I. HACCP REQUIREMENTS (N/A) to Equipment)**

The Food Service Program expects a Hazard Analysis Critical Control Point (HACCP) plan to be in place by potential vendors and their manufacturers. Prior to awarding the bid, the Food Service Program may require documentation verifying that a written HACCP plan is followed. The successful bidder must have Hazard Analysis Critical Control Point (HACCP) plan on file recall/hold control procedures including but not limited to:

- Traceability systems in place from receipt of commodity product to delivery of processed items to designated delivery site.
- Provision of 24/7 accessibility to successful bidder staff in the event of a food/USDA Hold/Recall.
- Public notification capability on website to provide updates on food/USDA Hold and Recall data for customers.

Bidders shall be responsible for all costs associated with the replacement product, including but not limited to labor, shipping charges and product credit.

### **II. PROPRIETARY INFORMATION;**

If a bidder submits any document with the bid that is considered to be proprietary in nature or is considered to be a trade secret, the bidder shall notify BHCA, Inc. that the documents are included in the bid. BHCA, Inc. will honor the request unless or until a competing bidder asks to have access to the information. In such cases, BHCA, Inc. will notify the affected bidder that a challenge has been made. If the affected bidder can produce a court issued restraining order within ten calendar days subsequent to the notification, the information will remain confidential and shall not be released pending subsequent court action. If the restraining order is not received within the ten working day period, the information will be released and BHCA, Inc. will not be held liable.

### **III. TRADE NAME, LABELS AND OTHER REQUESTS**

- a) Bidders are required to an operating manual for equipment, instructions for chemical use, and training as stated in Attachment B.
- b) Upon request, the vendor shall submit instructions for use, nutrition, and crediting information and any other documents deemed necessary for compliance with specifications.
- c) All items shall be properly labeled.

### **IV. METHOD OF PAYMENT AND PRICING INFORMATION**

- a) Prices - All prices shall remain fixed throughout the term of this contract. A single fixed fee shall be quoted per shipping carton. The fixed fee shall be bid in dollars and cents, and NOT as a percentage. The distributor's fixed fees shall remain firm for the initial term of the contract and shall include ALL overhead, profit, and handling charges. The fee for broken cases shall be prorated based on the number of units ordered from the full case. The Entities will keep broken case orders to a minimum. It is anticipated that these will be mostly spices, condiments, and some non-food items. During the contract period the Entities reserve the right, in its sole discretion, to add new items and new manufactures to the contract as companies continue to offer new products. New items will be purchased according to the following procedure:
- The Entities will submit product specifications to the awarded distributor.
  - Distributor shall solicit costs for more than one approved product that meets the intended specifications.
  - If requested, samples for testing shall be provided at not cost to the Entities. Each sample should include the product nutrition information, allergy information and the preparation instructions.
  - Purchase prices for new items will be determined by: FOB shipping carton cost + freight - any bill backs + fixed fee per shipping carton.
  - The Entities reserve the right to change products as needed throughout this contract.
  - The Entities reserve the right to remove items from this contract if the product is no longer needed.

At twelve month intervals the distributor must request in-place manufacturers to either extend or lower in-place costs for the following twelve month period. If a manufacturer increases the cost the distributor must solicit and document cost from other approved sources in the same manner as the initial product pricing.

- b) The successful Bidder warrants that the bid price, terms and conditions stated in his/her bid shall be firm through the bid process and until the time the award is made, at which time prices shall remain firm and fixed for the entire contract period.
- c) All bid prices must include all charges for packing and transporting to the individual schools listed as the addresses on the attached sheet.
- d) Prices will not include Federal Excise Tax or State Sales Tax.
- e) BHCA, Inc. will make payment within thirty (30) days of receipt of the invoice for properly received goods and services after inspection and acceptance of the product. Advance billings are not allowed. Where partial delivery is made, invoice for such part shall be made upon delivery, and payment made within thirty (30) days under conditions as above.
- f) Invoicing
- i) Invoices, at minimum, shall consist of the following information:
    - 1) Delivery location
    - 2) Item description and cost
    - 3) Extended cost for total quantity purchased
    - 4) Total cost of all products purchased

- ii) Monthly statements will be broken down by school invoice and mailed to BHCA, Inc.

#### **V. METHOD OF SHIPMENT/DELIVERY (where applicable)**

- a) Orders and deliveries - Orders and deliveries shall be supplied by the vendor as requested and specified except during an emergency and on holidays. No partial deliveries will be accepted.
- b) All orders are to be delivered F.O.B. to addresses as indicated on Attachment E.
- c) In an emergency situation in which BHCA, Inc. Food Service requires delivery in less than two days and the vendor cannot provide the goods within the emergency delivery period, the Food Service Program has the option to purchase those goods from another source with no penalty to either party.
- d) Delivery schedules that fall on a holiday will be made the following business day.
- e) Delivery of product must be made in a well-maintained refrigerated truck. All deliveries shall be placed in the area designated by the designee. Under no circumstances may a delivery be left outside the building. Deliveries must be received as specified.

#### **The Three Strikes Rule:**

- (i) After the vendor's first offense of providing sub-par quality product, late delivery and/or poor customer service, BHCA, Inc. will call the vendor to report contract violation and will put the vendor on notice that the documented occurrence is unacceptable.
- (ii) After the vendor's second offense of providing sub-par product, late delivery and/or poor customer service, BHCA, Inc. will send a certified notice to the vendor documenting that this is the second offense and a third offense will result in termination of the contract for cause. If the offense is providing sub-par product, then the vendor agrees to pay the Food Service program to purchase quality product at the vendor's expense.
- (iii) After the vendor's third and final offense of the aforementioned, BHCA, will terminate the contract for cause in writing via email and regular mail, copying the USDA Purchasing Compliance Officer.

#### **VI. SUBSTITUTION CLAUSE**

Shipments of items with brand name or specifications other than those listed on the bid shall be rejected or returned to the vendor at the vendor's expense unless prior arrangements have been made with the Food Service Managers. **Substitutions may be made ONLY with prior approval from the Food Service Managers.** All substitutions must be of equal or greater quality. In no case will an item be accepted if the quality is lower than stated in the bid. **Substitutions are to be priced at the same cost as the original awarded item.**

#### **VII. ADDITIONAL BID INSTRUCTIONS**

- a) **Bid modifications** - Bids cannot be modified after receipt of bids. Care should be taken to ensure that information provided is accurate, complete, and consistent. Omission of any of the required information may subject the Bidder to

disqualification. BHCA, Inc. reserves the right to request information or respond to inquiries for clarification purposes only.

- b) **Bid withdrawal** - Bidders may withdraw bids at any time up to the scheduled time for receipt of bids. Bidders desiring to withdraw their bid must submit the purpose for withdrawal in writing to BHCA, Inc. Food Service Program before the bid opening deadline. Bidders may resubmit bids provided it is prior to the scheduled time for receipt of bids.
- c) **Addenda** - If clarification of the specifications/instructions is required the request shall be made in writing not later than seven working days prior to the time and date set for the bid opening. BHCA, Inc. will respond to the request in the form of an addendum issued to all potential bidders. No addenda will be issued within five working days of the date and time of the bid opening. Should a question arise which requires clarification during this time period the date and time of bid opening will be delayed allowing issuing an addendum.
- d) **Bid examination**
  - i) Bidders shall carefully examine all documents in the solicitation to obtain knowledge of existing conditions, limitations, and requirements. Failure to examine the documents will not relieve the Bidder of responsibility for the same nor will extra payment or change order requests be considered for conditions which could have been determined by examining the solicitation.
  - ii) Bids will be considered as conclusive evidence of complete examination and understanding of the terms and conditions of the bid documents including the specifications and all requirements thereof the IFB. It is understood that submission of a bid indicates full acceptance of the same by the parties submitting the bid. Furthermore, by submitting a bid the Bidder waives the right to claims for additional time or monetary compensation for all work without limit required to complete the contract which could have been obtained by the Bidder through examination of all documents, or raising a question regarding requirements prior to submitting a bid.
- e) **Rejection or Disqualification of bids**
  - i) A bid that is incomplete, obscure, conditioned or contains additions not called for or irregularities of any kind, (including alterations or erasures), which are not initialed, may be rejected as non-conforming.
  - ii) BHCA, Inc. reserves the right to waive a bid's minor irregularities if rectified by Bidder within three business days of BHCA, Inc.'s issuance of a written notice of such irregularities.
  - iii) BHCA, Inc. reserves the right to disqualify bids upon evidence of collusion with intent to defraud or other illegal practices upon the part of the Bidder.
  - iv) Issuance of this IFB in no way constitutes a commitment by BHCA, Inc. to award a contract. BHCA, Inc. reserves the right to accept or reject, in whole or part, all bids submitted and/or to cancel this solicitation if it is determined to be in the best interest of the Food Service Program.
  - v) Any Bidder who has demonstrated poor performance during a current or previous Agreement with BHCA, Inc. may be considered a non-responsible

Bidder and their bid may be rejected. BHCA, Inc. reserves the right to exercise this option as is deemed proper and/or necessary.

vi) BHCA, Inc. reserves the right to accept or reject any or all bids, or to accept any part of a bid without accepting the whole thereof, or to accept such bid as they deem to be in the best interest of BHCA, Inc. Food Service Program.

f) **Evidence of Financial Capabilities (not required, best practice)**

After the bid opening, Bidders must be prepared to present suitable evidence of their financial standing within three business days after request by BHCA, Inc. This evidence would include an income statement, balance sheet, and statement of cash flow accompanied by an auditor's report attesting to the accuracy of the financial statements.

g) **Offer Acceptance Period**

Bid proposals are an irrevocable offer for sixty (60) days after the bid opening time and date.

### **VIII. ORDERING INFORMATION**

a) **Credit** - A credit or replacement will be issued for damaged or unacceptable items. All such transactions are to be worked out with each designee.

Replacement of damaged or unacceptable items will be made upon a mutually agreed time.

b) **Inspection** - Upon delivery of product, the items will be inspected by the facility, and if found to be defective or failing in any way to meet specifications as indicated, the items may be rejected or returned. Problems found with products due to concealed damage will be addressed on a case by case basis. Rejected products must be picked up immediately.

c) **Emergency orders** - In an emergency situation in which the Contractor cannot provide the supplies within the emergency delivery period, BHCA, Inc. has the option to purchase those supplies from another source with no penalty to either party.

### **IX. AMENDMENTS AND MODIFICATIONS OF CONTRACT**

The contract between BHCA, Inc. and the vendor shall not be amended or modified, nor shall any of its terms be waived, except in writing and executed by both parties.

### **X. ASSIGNMENT**

The vendor shall not assign, transfer, convey, delegate, sublet, or otherwise dispose of its agreements with BHCA, Inc., or its rights, title, or interest herein, or its power to execute such agreement, to any other person, company, or corporation without the previous consent and written approval by BHCA, Inc.

**XI. INDEPENDENT CONTRACTOR AND INDEMNITY**

The vendor shall act as an independent Contractor and not as an employee of BHCA, Inc. Vendor agrees to indemnify and hold harmless BHCA, Inc., its elected officials, employees, and agents from and against any and all liability, damages, claims, suits, liens, and judgments (including reasonable attorney’s fees), of whatever nature, for injuries to or death of any person or persons, or loss of or damage to property, to the extent attributable to the negligent acts of vendor, its subcontractors or its respective agents, servants, or employees or such parties’ failure to perform in accordance with the provisions of the contract resulting from this IFB.

**XII. TIME OF PERFORMANCE**

Notwithstanding any delay in the preparation and execution of the formal contract agreement, the Contractor shall be prepared, upon written notice of bid award, to commence delivery of goods pursuant to the award on “Start Date” shown on page #1 of this document entitled “INVITATION FOR BID”. **The contractor must comply with the time of performance.**

**XIII. FORCE MAJEURE**

If BHCA, Inc., in its reasonable discretion, determines that the Force Majeure Event is likely to delay Contractor’s performance for more than thirty (30) days, BHCA, Inc. reserves the right to cancel the agreement between parties. In that event, neither party shall have any further liability to the other, subject only to BHCA, Inc.’s obligation to pay the Contractor for work already completed by the Contractor and the Contractor’s warranty for work already completed.

**XIV. EVIDENCE OF INSURANCE**

- a) The successful bidder, at its expense, shall carry and maintain in full force at all times during the term of the contract resulting from this IFB the following insurance:

<b>COVERAGE</b>	<b>LIMITS OF LIABILITY</b>
Workman’s Compensation	Statutory
General Liability/Property	\$500,000 each occurrence
Personal Injury	\$500,000 each occurrence
Automobile	\$500,000 each occurrence
Bodily Injury	\$500,000 each occurrence

- b) Prior to commencement of performance of this Agreement, Contractor shall furnish to BHCA, Inc. a certificate of liability insurance evidencing all required coverage in at least the limits required herein, naming BHCA, Inc., its elected officials, agents, and employees as additional insured under the Comprehensive General Liability coverage, and providing that no policies may be cancelled without ten (10) days advance written notice to BHCA, Inc. Food Service Program.
- c) Said policies shall remain in full force and effect until the expiration of the terms of the contract or until completion of all duties to be performed hereunder by the Contractor, whichever shall occur later.

## **XV. EXCEPTIONS**

A bid submitted in response to this IFB constitutes a binding offer to comply with all terms, conditions, special conditions, general specifications, and requirements stated in this IFB, except to the extent that a Bidder takes exception to such provisions. To take exception to a provision of this IFB, the Bidder must clearly identify in the BID EXEMPTION FORM:

- a) The number and title of each section of the IFB that the Bidder takes exception to;
- b) The specific sentence within such section that the Bidder takes exception to;
- c) And any alternative provision proposed by the Bidder.

## **XVI. WARRANTY**

Successful Bidder shall fully warrant all PRODUCTS furnished under the terms of this contract, against poor and inferior quality. Time is of the essence of this contract. While under warranty, successful Bidder shall replace any damaged or inferior product in a timely manner to minimize the disruption of BHCA, Inc. operations.

## **XVII. GIFTS AND GRATUITIES**

Acceptance of gifts from contractors and the offering of gifts by contractors are prohibited. No employee of BHCA, Inc. purchasing products under provisions of the contract issued as a result of this invitation shall accept, solicit, or receive, either directly or indirectly, from any person firm or corporation any gift or gratuity.

## **XVIII. SAMPLES**

BHCA, Inc. reserves the right to request samples of any/all items indicated on the bid schedule. Samples shall be provided with five (5) business days upon request. It will be the responsibility of the supplier to incur all costs associated with the request of samples. Each sample is to be labeled with the bidder's name, the item number as indicated on the Quote Sheets, and the bid number. Each sample must have a minimum of five (5) servings to be evaluated. Product labels on selected samples will be kept for verification when shipments are received. Products without such information may not be considered.

## **XIX. PRE-BID CONFERENCE**

If a pre-bid conference has been scheduled under this solicitation, the date, time and location of it appear on the solicitation's cover sheet or elsewhere in the IFB. An Offeror should raise any questions it may have about the solicitation or the procurement at that time. An Offeror may not rely on any verbal responses to questions at the conference. Material issues raised at the conference that result in changes to the solicitation shall be answered solely through a solicitation addendum.

## **XX. SEVERABILITY**

The provisions of this contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the contract.

## **XXI. WAIVER AND REJECTION RIGHTS**

Notwithstanding any other provisions of the solicitation, BHCA, Inc. reserves the right to:

- Waive any immaterial defect or informality;
- Reject any and all offers or portions thereof; or
- Cancel a solicitation

## **XXII. RELEASE FROM CONTRACT**

In the event the market for a product covered by this request escalates to a point that the vendor is delivering product at less than the cost, the vendor may petition for release from the contract. The petition shall be supported by a third party market bulletin. The decision to release the vendor from the contract will be based on the difference between the market at the time of the bid opening and the current market value for this item.

## **XXIII. FOOD RECALLS AND BIOSECURITY**

Vendor shall be expected to voluntarily comply with all federal, state, and local mandates regarding the identification and recall of foods from the commercial and consumer marketplace. Vendor shall have a process in place to effectively respond to a food recall. The process must include accurate and timely communications to the Food Service Managers and assurance that unsafe products are identified and removed from the Food Service sites in an expedient, effective, and efficient manner. Selected Vendor will be expected to maintain all paperwork required for immediate and proper notification of recalls for full and split cases. Vendor will define their policy and procedures for handling food recalls on a separate document to be submitted along with bid. Vendor will provide the contact person and the backup person's contact information, who will handle food recalls, to the Food Service Manager or designee. Vendor shall maintain a contact list for BHCA, Inc. Food Service sites, distributors and other recipients. The list should have two recall contacts per site and be verified annually. Vendor will

notify all sites re: recall immediately - 24 hours or less, and ensure that the affected products are isolated and labeled "Do Not Use" to avoid accidental use. Vendor will identify the locations of the affected products and verify that the products have the correct product identification codes. Vendor will contact further processors to track redirected food affected by the recall and conduct an inventory assessment within 48 hours or less, of the affected product.

Biosecurity: Vendor must have a written policy regarding biosecurity and the food supply in accordance with the Bioterrorism Act 2002 under the U.S. Department of Health and Human Services, FDA and under the USDA, Food Safety and Inspection Service. Vendor will define their biosecurity policy and procedures on a separate document to be submitted along with bid.

#### **XXIV. CONTRACT WORK HOURS/SAFETY STANDARDS ACT**

Where applicable, all contracts awarded by the 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 of the Act, 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 one and a half 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, materials, or articles.

#### **XXV. DAVIS BACON ACT**

Davis Bacon Act, as amended (40 U.S.C.3141-3148). When required by Federal program legislation, 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 non-Federal entity 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 non-Federal entity 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). The Act provides that each contractor or subrecipient 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 non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

## **XXVI. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT**

If the 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 of 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 party.

## **XXVII. PROCUREMENT OF RECOVERED MATERIALS (2 CFR 200.322) if applicable**

A Food Service Program and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in EPA guidelines.

## **XXIII. SCOPE OF SERVICES**

1. All products furnished shall comply with the latest standards and regulations established by USDA.
2. BHCA, Inc. purchases only trans-fat free products, except for naturally occurring small amounts of trans-fat that may be present in animal proteins.
3. BHCA, Inc. reserves the right to determine whether or not the distributor has complied with product specifications and to choose which product best suits the school's needs.
4. All bad or damaged merchandise shall be either replaced or credits issued as per request of the Food Service Manager, within twenty- four hours of notification.
5. All merchandise shall be in good condition upon delivery.
6. No substitutions of any products, items, brands, or grades originally in the specifications or by addendum thereof, shall be made by the Distributor without the prior approval of BHCA, Inc.'s authorized representative before delivery can take place. Substitutions without prior approval will not receive payment. Substitute products must abide by specifications. Payment for approved substitutions will be made per serving based on contracted pricing.
7. All food products shall be kept in the proper state of frozen or refrigeration, for each item, at times, and shall be handled in accordance with the best commercial practices.

8. All items shall meet the USDA Buy American Requirement. BHCA, Inc. will request only domestic pricing for specified fruits and vegetables.
9. The supplier agrees to permit access to its facilities at reasonable times for inspection of the materials covered by this contract, if necessary.
10. Included in proposal submissions, Distributors will need to provide an electronic copy of product data sheets for all items bid. Data sheets should include, but are not limited to, manufacturer ingredient and nutrition fact panel, allergen information, pack size, instructions for preparation and serving, and child nutrition product specification sheet (if available). The Distributor must notify BHCA, Inc. whenever there is a change of sources and provide appropriate documentation.
11. BHCA, Inc. must be notified by the Distributor of any ingredient or nutritional changes or preparation process changes within ten (10) days of Distributor receiving this information from the manufacturer.
12. Distributor's must notify BHCA, Inc. of any manufacturer's recalls regarding items under this contract. Upon notification of a recall, the Distributor should contact BHCA, Inc. via telephone and then follow up in writing within 24 hours. All products, lot numbers or any other pertinent information available must be given to the school representative in writing within 24 hours. Failure to comply with this requirement may be cause for termination of this contract.
13. Random sampling and testing of products received may be performed. Should any item fail to meet specifications, quality or condition as sampled, BHCA, Inc. shall require the Distributor to remove any such item from each school, and full credit shall be given to each program for the total amount of product received.
14. The information concerning the specifications, manufacturer's name, product code number, or pack size is based on the latest available information that BHCA, Inc. has. If the information listed concerning the specifications, manufacturer, product code number or pack size is incorrect, please note it on the item in question when quoting. BHCA, Inc. may decide that the item needs to be re-bid if an error has occurred in the product specified.

### **Brand Name**

Any reference to brand names and code or model number in these specifications is offered as a point of reference in order for bidders to consider style, sizes, weights, and similar characteristics. Specifications used are intended to be open and non-restrictive. The use of Brand names within this document should not be interpreted as the exclusive brand desired, unless clearly specified. Bids for products that have been pre-approved by school as equal or equivalent to identified in this solicitation will be accepted without further clarification. Bids for products with different brand names than those pre-approved by the BHCA, Inc. must be approved prior to bid closing.

## **Samples**

Upon notification by BHCA, Inc. the apparent successful bidder shall provide, within three (3) days, samples as requested. Samples will be provided at the expense of the bidder. If the samples for any line item are unacceptable to BHCA, Inc., BHCA, Inc. may reject the bid for that line item on the grounds that it is non-responsive.

## **Pricing**

All unit prices quoted must include delivery to the schools and include all charges for fuel and distribution. The awarded Distributor must provide Net Off Invoice and Modified Fee for Services for USDA at a reasonable fee. The Distributor must bring to BHCA, Inc.'s attention all rebates, incentives or any other form of remuneration which in effect lowers cost to the distributor. The distributor must pass on the BHCA, Inc. fair compensation for rebates or bill-backs from the manufacturer.

A single fixed fee shall be quoted per shipping carton. The fixed fee shall be bid in dollars and cents, and NOT as a percentage. The Distributor's fixed fees shall remain firm for the initial term of the contract and shall include ALL overhead, profit, and handling charges. The fee for broken cases shall be prorated based on the number of units ordered from the full case. BHCA, Inc. Food Service shall keep broken case orders to a minimum. It is anticipated that these will be mostly spices, condiments, and some non-food items.

During the contract period BHCA, Inc. reserves the right, in its sole discretion, to add new items and new manufacturers to the contract as companies continue to offer new products. New items will be purchased according to the following procedure:

- BHCA, Inc. will submit product specifications to the awarded distributor.
- Distributor shall solicit costs for more than one approved product that meets the intended specifications.
- If requested, samples for testing shall be provided at no cost to BHCA, Inc. Each sample should include the product nutrition information, allergy information, and preparation instructions.
- Purchase prices for new items will be determined by: FOB shipping carton cost + freight -any bill backs + fixed fee per shipping carton
- BHCA, Inc. reserves the right to change products as needed throughout this contract.
- BHCA, Inc. reserves the right to remove items from this contract, if the product is no longer needed.

At twelve month intervals the distributor must request in-place manufacturers to either extend or lower in-place costs for the following twelve month period. If a manufacturer increases the cost the distributor must solicit and document cost from other approved sources in the same manner as the initial product pricing.

## **Emergency Orders**

Emergency orders may be placed occasionally. The awarded Distributor is expected to make delivery within twenty-four (24) hours of notification. If the awarded distributor cannot provide the supplies within the emergency delivery period, BHCA, Inc. has the option to purchase those supplies from another source with no penalty to either party and without engaging in a separate solicitation process.

## **Delivery Requirements**

Distributors must be able to meet the following delivery requirements or they will be determined to be non-responsive or non-responsible and not eligible for award. A distributor that cannot meet one of these delivery requirements should either not participate in the solicitation.

BHCA, Inc. Food Service will be submitting weekly food orders for each site throughout the school year, which includes summer feeding. The distributor must submit a delivery schedule to BHCA, Inc. within one week of award noting the day of the week that deliveries will be made to each school.

A list of schools, addresses, and phone numbers was provided to the Distributor throughout the solicitation process. Deliveries should be made a maximum of once a week, Monday through Friday during the hours of 6:00 am - 1:00 pm (CST), unless otherwise arranged and agreed to by the Food Service Managers. If delivery will be made on days other than listed on the schedule, the distributor must contact the Food Service Managers at least 48 hours before scheduled delivery to obtain approval for the delivery. If the delivery date is on a school holiday, the delivery shall be made for the next business day following the holiday. BHCA, Inc. will provide a school calendar to the distributor. BHCA, Inc. reserves the right to cancel deliveries in the event of an unforeseen school closure.

Time of delivery is a material term of the Agreement. If the distributor cannot meet the required delivery date, the distributor may be declared to be in breach of the agreement. Only authorized school representatives, such as the Food Service Manager, may accept and sign for deliveries. However, Food Service Managers do not have the authority to vary the terms of the agreement. If it is subsequently determined through an audit or otherwise that a Food Service Manager has accepted for delivery goods and or services that do not comply with the specifications or pricing terms of this agreement, then the distributor agrees to correct its delivery or nonconforming goods and/or services by replacing the non-conforming goods and/or services at the distributor's expense, cancelling any charges for the non-conforming goods and/or services or reimbursing the school for the price paid for any non-conforming goods and/or services.

All deliveries made to sites shall require inside delivery. The prices included in attachment B of this agreement must include any and all delivery charges. BHCA, Inc. staff will not participate in the removal of merchandise from any truck or transport vehicle.

All delivery trucks must be clean, sanitary, and free from dirt and debris. The Food Service Manager or designee may refuse a delivery if the truck is not clean and sanitary.

BHCA, Inc. reserves the right to require the distributor to reimburse the school for overtime payments made by the school to employees due to late deliveries by the distributor.

If the goods have not been delivered by the specified delivery date and no written extension of such delivery date has been granted by BHCA, Inc., BHCA, Inc. reserves the right to cancel the purchase of the bid items and/or any other pending purchase orders to the same vendor. If delivery of goods or services is not completed by the specified delivery date, then BHCA, Inc. may, without liability and in addition to any other rights or remedies, terminate the agreement by notice, effective immediately. BHCA, Inc. may purchase substitute goods and/or services and charge vendors for the difference between the price listed in Schedule A and the cost of the substitute goods from the other vendor.

### **Minimum Order Clause**

Any minimum order requirements imposed by the distributor shall be stated in the bid prior to bid opening and contract award. Order limitations placed on BHCA, Inc. after contract award will not be accepted. If the successful distributor fails to honor orders placed by BHCA, Inc. for the entire period of the contract, then the distributor will be held responsible for any cost incurred by BHCA, Inc. to solicit the items.

BHCA, Inc. reserves the right to negotiate minimum orders whether by total dollar amount and/or by volume in association with the total amount to the distributor in terms of total dollar amount and/or volume. If mutual agreement cannot be reached as the minimum order amount, BHCA, Inc. reserves the right to find the distributor non-responsive and to make the award to the next low bidder who is responsible and responsive or to resolicit for those items, whichever is deemed in the best interest of BHCA, Inc. The decision of BHCA, Inc. shall be final and unappealable.

### **Piggyback Clause**

This solicitation allows for other State and local government agencies within the State of Florida to buy off the awarded contract at the same prices quoted during the effective term, pending agreement between the distributor and the third party entity.

### **Performance Period**

This agreement shall establish a contract to remain open for one year from the Effective Date. BHCA, Inc. reserves the right to renew the agreement for four (4) one year terms.

**ATTACHMENT A  
CONTRACT SIGNATURE PAGE**

This agreement is dated as of \_\_\_\_\_ by and between  
BHCA, Inc. and \_\_\_\_\_ (hereinafter  
called CONTRACTOR.

BHCA, INC. and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth,  
agree as follows:

**ARTICLE 1. PRODUCTS**

CONTRACTOR shall provide all products as specified or indicated in the contract documents.  
CONTRACTOR shall supply and deliver specified products to BHCA, Inc. designated schools.

**ARTICLE 2. CONTRACT TIME**

The food, equipment, supplies, or goods shall be in accordance with this Agreement, and are to  
be completed as specified in IFB.

**ARTICLE 3. CONTRACT PRICE**

BHCA, Inc. shall pay CONTRACTOR for delivery of specified goods in accordance with  
CONTRACTOR'S bid, which is attached hereto. BHCA, Inc. shall pay CONTRACTOR net 30  
days from date of delivery unless other terms of payment are agreed upon in writing.

**ARTICLE 4. INVOICE PROCEDURES**

Invoices for payment with appropriate supporting documents shall be submitted to the following  
addresses:

Bay Haven Charter Academy  
Tammy Surber, Food Service Manager  
2501 Hawks Landing Blvd.  
Panama City, FL 32405  
Email: [surbetl@bayhaven.org](mailto:surbetl@bayhaven.org)  
Phone: 850-248-0298

North Bay Haven Charter Academy  
Jennifer Stovall, Food Service Manager  
1 Buccaneer Lane  
Panama City, FL 32404  
Email: [stovajf@bayhaven.org](mailto:stovajf@bayhaven.org)  
Phone: 850-248-0801

## **ARTICLE 5. CONTRACTOR'S REPRESENTATIONS**

In order to induce BHCA, Inc. to enter into this agreement, CONTRACTOR makes the following Representations:

5.1 CONTRACTOR has examined and carefully studied the Contract Documents and all other related data identified in the Bidding Documents.

5.2 CONTRACTOR is familiar with and is satisfied as to all federal, state and local laws and regulations that may affect cost, progress, performance and furnishing of the products.

## **ARTICLE 6. CONTRACT DOCUMENTS**

The Contract Documents, which comprise the entire agreement between BHCA, Inc. and CONTRACTOR concerning the work, consist of the following documents:

- Transmittal Page
- Standard Terms and Conditions
- Special Terms and Conditions
- Attachment A - Contract Signature Page
- Attachment B - Specifications and Quote Sheet
- Attachment C - Vendor Bid Form
- Attachment D - Delivery Site
- Attachment E - Lobbying Certificate Disclosure

There are no Contract Documents other than those listed above in this Article 6. The Contract Documents may only be amended, modified or supplemented by written agreement between both parties.

**ATTACHMENT A**

IN WITNESS WHEREOF, BHCA INC., AND CONTRACTOR have signed this Agreement. One counterpart each has been delivered to BHCA, Inc. and CONTRACTOR.

This Agreement will be effective \_\_\_\_\_, 2021.

\_\_\_\_\_ Director of Ancillary Services, Signature

\_\_\_\_\_ Name of Director of Ancillary Services

\_\_\_\_\_ Date

\_\_\_\_\_ Vendor Company Name

\_\_\_\_\_ Signature of Company Representative

\_\_\_\_\_ Name of Company Representative

\_\_\_\_\_ Date

**ATTACHMENT B  
SPECIFICATIONS AND QUOTE SHEET**

See separately posted Excel spreadsheet

"BHCA, Inc. Invitation for Bid - Attachment B - Bid Specifications and Quote Sheet"



**Authorized Signature of Bidder:**

This Bid form must be signed by an individual with actual authority to bid the company.

Company type (check one):

Sole Proprietorship     Partnership     Corporation     Joint Venture

Bidder attests that:

He/she has thoroughly reviewed this IFB and that this Bid response is submitted in accordance with the IFB requirements.

Company Name: \_\_\_\_\_

Federal ID #1: \_\_\_\_\_

Street Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Signature\*\*: \_\_\_\_\_

Signatory's Name: \_\_\_\_\_

Signatory's Title: \_\_\_\_\_

Witness's Signature\*\*: \_\_\_\_\_

Witness's Name: \_\_\_\_\_

Witness's Title: \_\_\_\_\_

\*\*For Corporations: The bid must be signed by the President or Vice President and the signature must be attested by the Corporate Secretary or Treasurer.

If any employee other than the President or Vice President signs on behalf of the Corporation, or if the President's or Vice President's signature is not attested by the Corporate Secretary or Treasurer, a copy of the corporate resolution authorizing said signatures should be attached to this bid. Failure to attach a copy of the appropriate authorization , if required, may result in rejection of the bid.

**ATTACHMENT D  
DELIVERY SITES  
BHCA, INC. FOOD SERVICE PROGRAM**

Bay Haven Charter Academy  
Tammy Surber, Food Service Manager  
2501 Hawks Landing Blvd.  
Panama City, FL 32405  
Email: [surbetl@bayhaven.org](mailto:surbetl@bayhaven.org)  
Phone: 850-248-0298

North Bay Haven Charter Academy  
Jennifer Stovall, Food Service Manager  
1 Buccaneer Lane  
Panama City, FL 32404  
Email: [stovajf@bayhaven.org](mailto:stovajf@bayhaven.org)  
Phone: 850-248-0801

**ATTACHMENT E - LOBBYING FORM & DISCLOSURE**

Approved by OMB  
0348-0046

**Disclosure of Lobbying Activities**

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352  
(See reverse for public burden disclosure)

<b>1. Type of Federal Action:</b> a. contract <input type="checkbox"/> b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	<b>2. Status of Federal Action:</b> a. bid/offer/application <input type="checkbox"/> b. initial award c. post-award	<b>3. Report Type:</b> a. initial filing <input type="checkbox"/> b. material change  <b>For material change only:</b> Year _____ quarter _____ Date of last report _____
<b>4. Name and Address of Reporting Entity:</b> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if Known:   Congressional District, if known:	<b>5. If Reporting Entity in No. 4 is Subawardee,</b> Enter Name and Address of Prime:   Congressional District, if known:	
<b>6. Federal Department/Agency:</b>	<b>7. Federal Program Name/Description:</b>  CFDA Number, if applicable: _____	
<b>8. Federal Action Number, if known:</b>	<b>9. Award Amount, if known:</b> \$	
<b>10. a. Name and Address of Lobbying Registrant</b> <i>(if individual, last name, first name, MI):</i>	<b>b. Individuals Performing Services</b> <i>(including address if different from No. 10a)</i> <i>(last name, first name, MI):</i>	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	<b>Signature:</b> _____ <b>Print Name:</b> _____ <b>Title:</b> _____ <b>Telephone No.:</b> _____ <b>Date:</b> _____	
<b>Federal Use Only</b>	Authorized for Local Reproduction Standard Form - LLL (Rev. 7-97)	

## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity 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 a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

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According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

This form is available electronically.

OMB Control No. 0505-0027

Expiration Date: 04/30/2022



**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion AD-1048  
Lower Tier Covered Transactions**

*The following statement is made in accordance with the Privacy Act of 1974 (5 U.S.C. § 552a, as amended). This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, and 2 C.F.R. §§ 180.300, 180.335, Participants' responsibilities. The regulations were amended and published on August 31, 2005, in 70 Fed. Reg. 51865-51880. Copies of the regulations may be obtained by contacting the Department of Agriculture agency offering the proposed covered transaction.*

*According to the Paperwork Reduction Act of 1995 an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0505-0027. The time required to complete this information collection is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The provisions of appropriate criminal, civil, fraud, privacy, and other statutes may be applicable to the information provided.*

***(Read instructions on page two before completing certification.)***

- A. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency;
- B. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

ORGANIZATION NAME	PR/AWARD NUMBER OR PROJECT NAME
NAME(S) AND TITLE(S) OF AUTHORIZED REPRESENTATIVE(S)	
SIGNATURE(S)	DATE

*In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.*

*Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.*

*To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at [How to File a Program Discrimination Complaint \(https://www.ascr.usda.gov/filing-program-discrimination-complaint-usda-customer\)](https://www.ascr.usda.gov/filing-program-discrimination-complaint-usda-customer) and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442.*

### Instructions for Certification

- (1) By signing and submitting this form, the prospective lower tier participant is providing the certification set out on page 1 in accordance with these instructions.
- (2) The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.
- (3) The prospective lower tier participant shall provide immediate written notice to the person(s) to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (4) The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549, at 2 C.F.R. Parts 180 and 417. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
- (5) The prospective lower tier participant agrees by submitting this form that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- (6) The prospective lower tier participant further agrees by submitting this form that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- (7) A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the System for Award Management (SAM) database.
- (8) Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (9) Except for transactions authorized under paragraph (5) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

### **JESSICA LUNSFORD ACT**

Background screening requirements for certain non-instructional school district employees and contractors.—(1) Except as provided in s. 1012.467 or s. 1012.468, non-instructional school district employees or contractual personnel who are permitted access on school grounds when students are present, who have direct contact with students or who have access to or control of school funds must meet level 2 screening requirements as described in s. 1012.32. Contractual personnel shall include any contractor, individual, or entity under contract with a school or the school board.(2) Every 5 years following employment or entry into a contract in a capacity described in subsection (1), each person who is so employed or under contract with the school district must meet level 2 screening requirements as described in s. 1012.32, at which time the school district shall request the Department of Law Enforcement to forward the fingerprints to the Federal Bureau of Investigation for the level 2 screening. If, for any reason following employment or entry into a contract in a capacity described in subsection (1), the fingerprints of a person who is so employed or under contract with the school district are not retained by the Department of Law Enforcement under s. 1012.32(3)(a) and (b), the person must file a complete set of fingerprints with the district school superintendent of the employing or contracting school district. Upon submission of fingerprints for this purpose, the school district shall request the Department of Law Enforcement to forward the fingerprints to the Federal Bureau of Investigation for the level 2 screening, and the fingerprints shall be retained by the Department of Law Enforcement under s. 1012.32(3)(a) and (b). The cost of the state and federal criminal history check required by level 2 screening may be borne by the district school board, the contractor, or the person fingerprinted. Under penalty of perjury, each person who is employed or under contract in a capacity described in subsection (1) must agree to inform his or her employer or the party with whom he or she is under contract within 48 hours if convicted of any disqualifying offense while he or she is employed or under contract in that capacity.(3) If it is found that a person who is employed or under contract in a capacity described in subsection (1) does not meet the level 2 requirements, the person shall be immediately suspended from working in that capacity and shall remain suspended until final resolution of any appeals.

### **DRUG FREE WORKPLACE**

This certification is required by the regulations implementing Sections 5151- 5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 USC 701 et seq.), 7 CFR Part 3017, Subpart F, Section 3017-600, Purpose. On January 31, 1989, regulations were amended and published as Part II of the May 25, 1990 Federal Register (pages 21681-21691).