



OHIO VALLEY EDUCATIONAL COOPERATIVE (OVEC)
P.O. BOX 1249 – 100 ALPINE DRIVE
SHELBYVILLE, KY 40065
PHONE: (502) 647-3533 FAX: (502) 647-3581
www.ovec.org

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

SECTION 1 – SCOPE OF SOLICITATION

1.0 PURPOSE AND SCOPE OF SOLICITATION:

The Ohio Valley Educational Cooperative (hereinafter referred to as “OVEC”) Board of Directors is soliciting for request for proposals to contract with a single qualified Offeror for the purpose of providing a complete Food Service (Child Nutrition) Safety/Sanitation Services and Cleaning Supply Program to each of the Child Nutrition Services kitchens in the participating OVEC member districts. The program is to be designed to assist the District with OSHA, HACCP, ServSafe, USDA and local health department compliance.

1.1 MEMBER SCHOOL DISTRICTS:

Any member school district of OVEC (hereinafter referred to as member or members) is eligible to utilize the awarded contract(s). However, this does not mean that all members will participate. This statement of intent does not obligate any district to utilize this bid.

OVEC MEMBER DISTRICTS

- | | |
|------------------------------|----------------|
| Anchorage School | Grant County |
| Bullitt County | Henry County |
| Carroll County | Oldham County |
| Eminence Independent | Owen County |
| Erlanger-Elsmere Independent | Shelby County |
| Franklin County | Spencer County |
| Frankfort Independent | Trimble County |
| Gallatin County | |

Sealed bids will be received at the OVEC office, P.O. Box 1249, 100 Alpine Drive, Shelbyville, Kentucky 40066 until **10:00 a.m. on Thursday, May 28, 2020**. Mailed or delivered bids must be enclosed in a sealed envelope and marked **“RFP for Sanitation Services and Cleaning Supply Program”**.

1.2 INTENT:

It shall be the intent and purpose of this Request for Proposal (RFP) to cover the terms and conditions under which a successful Bidder shall be responsible to supply and deliver Chemicals and Sanitation Products to the participating member districts of the Ohio Valley Educational Cooperative through sealed bids.

OVEC is seeking to identify and select one (1) or more vendors to provide a complete Food Service (Child Nutrition) Safety/Sanitation Services and Cleaning Supply Program. The selected vendor(s) shall provide products in accordance with the Standard Terms and Conditions, Special Terms and Conditions, the RFP and any applicable Addenda.

OVEC 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 the OVEC member districts.

1.3 CONTRACT PERIOD:

- a) **Initial Term:** - A contract shall be awarded for 12-months with the bid period beginning July 1, 2020 through June 30, 2021.
- b) **Extension Option** - The contract may be extended up to three (3) months at the same bid pricing, provided mutual agreement by both parties in written form. This extension will be utilized only to prevent a lapse of contract coverage and only for the time necessary to issue and award a new Request for Proposal, but not to exceed three months.
- c) **Renewal Option** - The contract may be renewed annually by OVEC upon written agreement of both parties for additional 12 months not to exceed 4 additional years. The determination to renew the contract beyond the initial 12-months shall be determined in part by the performance of the awarded bidder. Any contract extension is contingent upon written agreement of OVEC and the awarded bidder. The bid will not be automatically extended beyond any current year unless expressly approved by OVEC.

OVEC shall assume no responsibility for any delay as a result of mails failing to be delivered on time. All bids which are in order, properly signed, etc., shall be opened at this time. Telegraphic or facsimile bids are prohibited. Any bid received electronically shall be considered a non-responsive bid.

SECTION 2 – GENERAL INSTRUCTIONS

2.0 BID SUBMISSION PROCEDURES:

OVEC 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 this RFP are entirely the responsibility of the Bidder, and shall not be reimbursed in any manner by the OVEC.

- a) Bids must be enclosed in a sealed envelope. The outside of the envelope shall be clearly marked **“RFP for Sanitation Services and Cleaning Supply Program”**. RFPs must be mailed or delivered to:
 - OVEC Office
 - Attn: Andrea Skaggs
 - P.O. Box 1249
 - 100 Alpine Drive
 - Shelbyville, Kentucky 40066
- b) RFPs must be received by OVEC no later than **10:00 a.m. on Thursday, May 28, 2020**.
- c) Late RFPs shall not be accepted. OVEC shall assume no responsibility for any delay as a result of mails failing to be delivered on time. All RFPs shall be opened at this time. Telegraphic or facsimile bids are prohibited. Any RFP received electronically shall be considered a non-responsive bid.
- d) If the Bidder submits RFP 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 OVEC's sole discretion, may be given 72 hours from the time of the RFP opening in which to provide such information to OVEC.

e) OVEC has the right to waive any and all informalities.

2.1 RFP TIMELINE

Issue Date	April 28, 2020
Final Date for written questions	May 12, 2020
Issue Responses to Questions	May 15, 2020
RFP Deadline/Opening	May 28, 2020 at 10:00 a.m.
RFP Award	June 12, 2020

2.2 PUBLIC NOTICE

The public notice for this invitation, the invitation itself, responses to questions, and any addendums can be viewed, downloaded, or printed from the Internet at <http://www.ovec.org/Content2/22>.

2.3 AMENDMENTS TO SOLICITATION

The Solicitation may be amended at any time prior to opening. All actual and prospective Offerors should monitor the following web site for the issuance of Amendments: <http://www.ovec.org/Content2/22>. Bidders shall acknowledge receipt of any Amendment to this solicitation (1) by signing and returning the Amendment, (2) by letter, or (3) by submitting a bid that indicates in some way that the bidder received the Amendment.

2.4 PRICING

All bid prices must include transportation and delivery charges to the location (school district, OVEC, etc.) specified during ordering. Fuel surcharges and other similar charges are not permitted. All bid pricing quoted shall remain firm for the duration of the bid period (July 1, 2020 - June 30, 2021).

The bidder shall provide the same bid pricing to all participating OVEC members. Bidders MAY NOT submit multiple discount levels for the same product by OVEC members.

2.5 AWARD DETERMINATION

This RFP shall be awarded to one bidder to provide items and services and result in a firm fixed price contract to the participating OVEC member districts. All RFP prices shall remain firm for the entire contract period.

This RFP will be awarded to the most responsive/responsible bidder meeting all terms, conditions, and specifications of the RFP and not based solely on price within approximately seven (7) working days of the openings of the bids. Submitted RFPs shall remain valid during this seven (7) day period. OVEC reserves the right to accept or reject any and all RFPs or parts thereof.

2.6 RFP PROTEST PROCEDURES

The OVEC Board of Directors or its' designee, shall have authority to determine protests and other controversies of actual or prospective bidders in connection with the solicitations or selection for award of a contract.

Any actual or prospective bidder, who is aggrieved in connection with solicitation or selection for award of a contract, may file protest with the Chief Executive Officer of OVEC. A protest or notice of

other controversy must be filed promptly within two (2) calendar weeks after award of bid. All protests or notices of other controversies must be in writing and shall be addressed to:

**Chief Executive Officer
OVEC
P.O. Box 1249
Shelbyville, KY 40065
(502) 647-3533**

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

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

2.7 CLARIFICATION/INTERPRETATIONS

This Request for Proposal (RFP) is issued by the Ohio Valley Educational Cooperative on behalf of its member districts. All inquiries, clarifications, or interpretations regarding this RFP should be directed in an email to askaggs@ovec.org. PLEASE DO NOT CONTACT MEMBERS.

Responses to inquiries that affect the content of this RFP will be provided in writing to all recipients of the RFP and posted on the website www.ovec.org. It is the responsibility of each Bidder to inquire about any aspect of the RFP that is not fully understood or is believed to be susceptible to more than one interpretation. OVEC will accept only emailed inquiries regarding this RFP until May 12, 2020 in order for a reply to reach all Bidders before the RFP closes and to give bidders ample time to respond to any Addenda. Any information given to a prospective Bidder concerning an RFP will be furnished to all prospective Bidders as an Addendum to the RFP if such information is necessary or if the lack of such information would be prejudicial to uninformed Bidders.

SECTION 3 - STANDARD TERMS AND CONDITIONS

- 3.0 Maximum Free and Open Competition:** It is the clear intention of the Ohio Valley Educational Cooperative to foster all procurement transactions in a manner to provide to the maximum extent practicable, open and free competition. (20 U.S.C. 1221e-3(a)(1) and 3474, 22 CFR 135)

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

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

All OVEC bids and solicitations for goods and services shall be based upon a clear and accurate description of the technical requirements for the material, product or service to be procured. Such description shall not, in competitive procurements, contain features that unduly restrict competition. Brand name or equal clause may be used as a means to define the performance of other salient requirements. The specific features of the named brand that must be met by bidders/offers are clearly specified.

A contract will be entered into by OVEC with only responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be made by OVEC for such matters as a contractor's integrity, record of past performance, financial and technical resources or accessibility to other necessary resources.

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

OVEC shall follow all laws of the Commonwealth of Kentucky requiring contracts for goods or services in excess of \$20,000.

- 3.1 **Correction of Mistakes:** Bidders are cautioned to re-check their proposal for possible errors before submitting to OVEC. OVEC will not accept any alterations or corrections, including signatures, once the RFP opens. Errors discovered after public opening cannot be corrected.
- 3.2 **Error in Bid:** No RFP will be altered, or amended after the specified time and date set for the RFP opening. The OVEC Board or its designee reserves the right to waive defects and informalities in bids, to reject any or all bids, or to accept any bid as may be deemed to its interest. OVEC may allow the withdrawal of a bid where there is a patent error on the face of the bid document, or where the bidder presents sufficient evidence, substantiated by bid worksheets, that the bid was based upon an error in the formulation of the bid price.
- 3.3 **Withdrawal of Bid:** All bids shall be valid for a period of thirty (30) days from the bid opening date to allow for evaluation, study, and consideration by the OVEC Board or its designee. A bidder may withdraw a bid after it has been submitted only if a written request is submitted and received prior to the expiration of the time during which bids may be submitted, without prejudice, by submitting a written request for its withdrawal to OVEC with the corresponding Bid Reference Number.
- 3.4 **Review:** After the public opening of proposals received from the Bid Invitation, OVEC staff and member officials will review the results, develop a preliminary tabulation, and may contact bidders for the purpose of clarification only.
- 3.5 **Warranty:** The awarded bidder shall make available and honor all manufacturer's warranties, both standard and extended, to all OVEC members.
- 3.6 **Recalls:** The bidder shall notify OVEC and its members immediately of any product recalls. The bidder will issue a credit or comparable substitute for any delivered, recalled product at the member's discretion. All costs associated with voluntary and involuntary product recalls shall be borne by the awarded bidder.
- 3.7 **Penalty:** The bidder agrees to provide total requirements as listed herein, thereby minimizing occurrences when a member may have to seek other interim product sources. The awarded bidder is to deliver 100% of primary bid items within 10 business days; repeated failure to do so will result in default.
- 3.8 **Liability:** The awarded bidder agrees to protect, defend, and save harmless OVEC, and members from any suits or demands for payment that may be brought against it for the use of any patented material, process, article, or device that may enter into the manufacture, construction, or form a part of the work covered by either order or contract; and the awarded bidder further agrees to indemnify and save harmless OVEC, and members from suits or actions of every nature and description brought against it for, or on account of any injuries or damages received or sustained by any party or parties by, or for any of the acts of the bidders, his servants or agents. The awarded bidder will hold OVEC and participating members harmless for any and all damages resulting from

consumption of products delivered under this contract when such damages are attributed to foreign materials or other defects in products delivered by the awarded bidder.

- 3.9 **Non-Assignability of Awarded Bid:** The awarded bidder cannot convey this contract to its successors or assigns without the prior, express approval of the Board of Directors of OVEC or its designee.
- 3.10 **Contract Suspension:** OVEC may, at its sole discretion, suspend a bidder for a period of up to 90 days to investigate alleged instances of material breach of contract or material non-compliance. The awarded bidder will not accept new orders from OVEC or member entities while suspended. However, the awarded bidder may complete orders already in process. Breach of contract, default, or non-compliance renders the contract null and void. The awarded bidder agrees that they have no legal recourse of any nature against OVEC or member entities except for payment of goods, supplies and services that are due for prior purchases under this bid. The decision of OVEC regarding suspension and/or termination is final.
- 3.11 **Termination for Convenience:** OVEC reserves the right to terminate any contract at any time, in whole or in part, by thirty (30) day written notice to Contractor. Upon receipt by the Contractor of the "notice of termination", the Contractor shall discontinue all services with respect to the applicable contract. OVEC or the participating member, after deducting any amount(s) previously paid, shall pay for all services rendered or goods supplied by the Contractor, as well as any reasonable costs incurred by Contractor up to the time of termination but not including Contractor's loss of profit. The cost of any agreed upon services provided by the Contractor will be calculated at the agreed upon rate prior to "notice of termination" and a fixed fee contract will be pro-rated (as appropriate).
- 3.12 **Termination for Non-performance (Default):** OVEC may terminate the resulting contract for non-performance, as determined by OVEC, for such causes as:
- a) Failing to provide satisfactory quality of service, including, failure to maintain adequate personnel, whether arising from labor disputes, or otherwise any substantial change in ownership or proprietorship of the Contractor, which in the opinion of the School district is not in its best interest, or failure to comply with the terms of this contract;
 - b) Failing to keep or perform, within the time period set forth herein, or violation of, any of the covenants, conditions, provisions or agreements herein contained;
 - c) Adjudicating as a voluntarily bankrupt, making a transfer in fraud of its creditors, filing a petition under any section from time to time, or under any similar law or statute of the United States or any state thereof, or if an order for relief shall be entered against the Contractor in any proceeding filed by or against contractor thereunder. In the event of any such involuntary bankruptcy proceeding being instituted against the Contractor, the fact of such an involuntary petition being filed shall not be considered an event of default until sixty (60) days after filing of said petition in order that Contractor might during that sixty (60) day period have the opportunity to seek dismissal of the involuntary petition or otherwise cure said potential default; or
 - d) Making a general assignment for the benefit of its creditors, or taking the benefit of any insolvency act, or if a permanent receiver or trustee in bankruptcy shall be appointed for the Contractor.

In the event the physical facilities of the contractor are destroyed or a labor dispute makes performance under the terms of the contract impossible, the contractor shall not be held liable by OVEC or the school districts.

- 3.13 **Demand for Assurances:** In the event OVEC has reason to believe Contractor will be unable to perform under the Contract, it may make a demand for reasonable assurances that Contractor will be able to timely perform all obligations under the Contract. If Contractor is unable to provide such adequate assurances, then such failure shall be an event of default and grounds for termination of the Contract.
- 3.14 **Notification:** OVEC will provide ten (10) calendar days written notice of default. Unless arrangements are made to correct the non-performance issues to the school district's satisfaction within ten (10) calendar days, the School district may terminate the contract by giving forty-five (45) days notice, by registered or certified mail, of its intent to cancel this contract.
- 3.15 **Attorney's Fee:** In the event that either party deems it necessary to take legal action to enforce any provision of the contract, and in the event OVEC prevails, the Contractor agrees to pay all expenses of such action, including attorney's fees and costs at all stages of litigation.
- 3.16 **Compensable Damages for Breach:** The Contractor agrees that the following items shall be included as compensable damages for any breach of a contract with OVEC.
- Replacement costs.
 - Cost of repeating the competitive bidding procedure expenses.
 - Expenses incurred as the result of delay in obtaining replacements.

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

- 3.17 **Buy American Act:** The bidder will abide by the Buy American Act (42USC 1760(n)) and all associated USDA policy memorandums (e.g., SP 38-2017, dated June 30, 2017, attached).

In support of the Buy American provision the bidder certifies that the products provided to OVEC members are domestically grown, processed, and manufactured in the United States to the maximum extent practicable. Domestic commodity or product means an agricultural commodity that is produced in the US and a food product that is processed in the US substantially (at least 51 percent) using agricultural commodities that are produced in the US.

The bidder will provide documentation to OVEC prior to award and to the member prior to shipment for each product sourced internationally. **Documentation must include item number, item description, country of origin, and exception rationale.** Allowable exceptions to the Buy American Provision are limited to 1) the product is not produced or manufactured in the United States in sufficient and reasonable available quantities of a satisfactory quality; and 2) competitive bids reveal the costs of a United States product are significantly higher than the foreign product. Any substitution of a non-domestic product for a domestic product (which was originally a part of the solicitation), must be approved, in writing, by the Food Service Director, prior to the delivery of the product to the School.

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

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

Failure to abide by the Buy American Act (42USC 1760(n)) and all associated USDA policy memorandums (e.g., SP 38-2017, dated June 30, 2017, attached) shall be cause for termination of contract.

- 3.18 **Product Protection Guarantees:** Members have automatic product protection recourse against suppliers for products that are misrepresented. According to federal regulations, the supplier whose name and address appear on the package is the responsible party. Awarded bidders are expected to take immediate action to correct any situation in which product integrity is violated.
- 3.19 **Contractor's Liability Insurance Requirements:** The successful contractor must furnish each participating OVEC member district with a copy of his Worker's Compensation and/or General Liability insurance prior to commencement of work. Worker's Compensation coverage shall meet the requirements of Kentucky law.
- 3.20 **Contractor's Liability:** The contractor shall provide and pay for all materials, tools, equipment, labor and professional and non-professional services, and shall perform all other acts and supply all other things necessary, to fully and properly perform and complete the work. The contractor must act as the prime contractor and assume full responsibility for any subcontractor's performance. The contractor will be considered the sole point of contact with regard to all situations, including payment of all charges and the meeting of all other requirements.
- 3.21 **Licenses and Permits:** During the term of the contract, the Contractor shall be responsible for obtaining, and maintaining in good standing, all licenses (including professional licenses, if any), permits, inspections and related fees for each or any such licenses, permits and /or inspections required by the State, county, city or other government entity or unit to accomplish the work specified in this solicitation and the contract.
- 3.22 **Other Conditions:**
- a) The bidder shall be in compliance and will comply with any and all local, state, and federal laws and regulations related to this bid and the rendering of goods and /or services.
 - b) This contract shall be governed in all respects as to validity, construction, capacity, performance, or otherwise by the laws of the Commonwealth of Kentucky.
 - c) Any suit, action or other proceeding regarding the execution, validity, interpretation, construction, or performance of this agreement brought against OVEC shall be filed in the Shelby County Circuit Court of the Commonwealth of Kentucky.
 - d) Any suit, action or other proceeding regarding the execution, validity, interpretation, construction, or performance of this agreement brought against OVEC member district shall be filed in the member district's local jurisdiction.
 - e) The bidder assures OVEC they are conforming to the provisions of the Civil Rights Act of 1964 as amended.
 - f) Kentucky Sales and Use Tax Certificate of Exemption Form will be issued upon request.
 - g) The bidder shall provide access to the grantee, the sub grantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the bidder which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions (7 CFR § 3016.36). Such access shall be used to ensure compliance with all applicable Federal and state

statutes, regulations and rules including but not limited to cost principles set forth in 2 CFR § 225.

- h) The awarded bidder shall comply with all applicable cost principles, including but not limited to those set forth in 2 CFR § 225.
- i) The bidder shall retain all required records for three years after grantees or sub grantees make final payments and all other pending matters are closed (7 CFR § 3016.36).
- j) The U.S. Department of Agriculture (USDA) prohibits discrimination against its customers, employees, and applicants for employment on the basis of race, color, national origin, sex, age, disability, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or if all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department.
- k) The bidder is and shall remain in compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3).
- l) The bidder is and shall remain in compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5).
- m) The bidder is and shall remain in compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).
- n) The awarded firm agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. and the Federal Water Pollution Control Act as amended 33 U.S.C. §§ 1251 et seq. The Contractor agrees to report each violation to the USDA and the appropriate EPA Regional Office.
- o) The bidder is and shall remain in compliance with all mandatory standards and policies relating to energy efficiency contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
- p) By submitting this document, the bidder certifies that this response is made without prior understanding, agreement, or connection with any corporation, firm or person submitting a response. For the same materials, supplies, or equipment, and is in all respects fair and without collusion or fraud. The bidder acknowledges that collusive bidding is a violation of federal law and can result in fines, prison sentences and civil damage awards.
- q) The bidder is legally entitled to enter into contracts with agencies of the Commonwealth of Kentucky and is not in violation of any prohibited conflict of interest, including those prohibited by provisions of KRS 164.390, KRS 61.092-61.096, KRS 42.990, KRS 45A.335-490. Any employee or official of OVEC or member institution, elective or appointive, who shall take, receive, or offer to take or receive, either directly or indirectly, any rebate, percentage of contract, money, or things of value as an inducement or intended inducement, or in the procurement of business, or the giving of business, for or to or from, any person, or in open market seeking to make sales to the membership shall be deemed guilty of a felony and upon conviction such person or persons shall be subject to punishment or fine in accord with state and/or federal laws.
- r) The provisions of KRS 365.080 and KRS 365.090 which permit the regulation of resale price by contract, does not apply to sales to the State.
- s) OVEC reserves the right to reject any and/or all bids and to waive informalities. A contract, based on this sealed bid, may or may not be awarded.

SECTION 4 – SCOPE OF WORK/SPECIFICATIONS

Ohio Valley Educational Cooperative is seeking to partner with an experienced and qualified Food Service Safety/Sanitation Company to provide a complete Food Service Safety/Sanitation Services and Cleaning Supply Program to each of the participating OVEC member district Child Nutrition Services kitchens. The program is to be designed to assist the District with OSHA, HACCP, ServSafe, USDA and local health department compliance.

The bidder shall have a proven record of excellent customer service, and resources available to achieve the requirements of this proposal. Bidders shall be required to provide evidence of qualifications, and ability to fulfill the requirements stated herein.

4.0 GENERAL REQUIREMENTS

- 4.0.1 The awarded vendor will be responsible for providing and overseeing a Food Service Safety/Sanitation Services and Cleaning Supply program to assist the District with OSHA, HACCP, ServSafe, USDA and local health department.
- 4.0.2 The awarded vendor will provide a complete Food Service Safety/Sanitation Services and Cleaning Supply Program to each participating OVEC member school site. Training, site monitoring, delivery of chemicals/cleaning supplies and a standardized system of reporting are an integral part of the service required. Each kitchen/cafeteria will be visited by vendor on a monthly basis to provide and monitor product as well as interact with staff and monitor their Food Service Safety/Sanitation.
- 4.0.3 All delivery and any incidental charges must be included in the pricing. Pricing will include all products, ancillary items, dispensers, installations, on-going delivery, training and evaluations.
- 4.0.4 All vendor employees providing routine monthly site visitation will be ServSafe-certified professionals.
- 4.0.5 All vendor employees coming to school sites must wear a company uniform and have on person a company identification badge. A Criminal Background Check may be required of vendor employees that provide service.

4.1 PRODUCT AND SERVICE SPECIFICATIONS

4.1.1 The successful bidder must provide to each site as a condition of this contract and at no additional cost cleaning chemicals and supplies in sufficient quantity to meet the levels of sanitation required by the health department and school system. Package labeling must be clear and directions in English and Spanish. All products must provide MSDS/SDS information. Detergents must dilute instantly in hot or cold, hard or soft water. Products shall make an effective cleaning solution, which leaves no film or residue and shall not stain or discolor equipment when used at recommended proportions. At minimum, these chemicals and supplies must include, but not limited to:

- Anti-microbial liquid hand soap
- All Purpose Cleaner (for floor cleaning and spray applications)
- Multi-Purpose Degreaser (for degreasing floors and spray applications)
- Pot and Pan Detergent
- Sanitizer (Quaternary Solution – no Chlorine)
- Germicidal Detergent (for cleaning and disinfecting)

- Laundry Detergent (Tide or pre-approved equal)
 - Medicated Hand Cream/Lotion
 - Protective Barrier Cream
 - High Temp Dish Detergent
 - High Temp Rinse Additive for Use in Rinse Injections
 - Lime Scale Remover
 - Exzyme Drain Detergent
 - Ancillary materials: Pack cutters, sanitizer test kits, oven scrapers, spray bottles, dispensing equipment, protective gloves and goggles as needed, including re-supply but not to exceed (6) six of each type per school, per year. After the (6) six have been expended, it will be the decision of the vendor to provide additional quantities at no additional cost
- 4.1.2 Complete standardization – similar products and procedures, hands-on training and problem solving assistance
- 4.1.3 ServSafe classes and testing are offered as part of program
- 4.1.4 Minimum 48-hour guaranteed response time to any location with re-supply needs or technical assistance.
- 4.1.5 On-site inventory & delivery each month
- 4.1.6 A set of MSDS/SDS sheets on all chemicals and detergents used in the school kitchens for all sites and for the Child Nutrition Central Office.
- 4.1.7 Posters for all sites demonstrating the safe, effective method of using cleaning chemicals.
- 4.1.8 Annual and as needed, on-site training with subsequent site monitoring on effective use and inventory control of chemicals and cleaning supplies. Compliance and training reference binders for each site location.
- 4.1.9 Annual and as needed, on-site training with subsequent site monitoring on the use of probe thermometers and safe food handling following HACCP guidelines.
- 4.1.10 Computerized service reports after each visit, sent to School Nutrition Food Service Coordinator. Reports will include date, time spent at each site and a brief description of the training and services provided.
- 4.1.11 Vendor to provide procedure and reference manual covering the mixing, use and application of all cleaning materials used in the program. Reference guide to be complete with bilingual usage, application tools and color-coded cleaning schedule.
- 4.1.12 Vendor will provide training videos to the School Nutrition Food Service Department, which will be used for continuous training and re-training of staff and new employees. These videos will not replace the site-based training.
- 4.1.13 Vendor to provide additional products and services available and pricing information for these products and services. Listed are some services and products districts are interested in receiving more information)
- a) Water filtration and softening system
 - b) Combi oven cleaners and rinse agents
 - c) HACCP Program (use district information to write, supply and maintain HACCP plans)

- d) Temperature Management program
- e) Complete disposable glove program based on the needs of the district. Gloves provided shall include disposable powder-free vinyl gloves which are to be free of latex and proteins to which some users may be sensitive. Multiple sizes shall be provided. Disposable gloves shall be 100% latex free and be rated for food processing as well. Gloves are to be made with component materials that meet the USDA and FFDCa standards (21 CFR for use in Food Processing). As part of the program, all staff will receive on-site training related to proper use of disposable gloves. Training to include review of FDA code application related to disposable glove use, change frequency, cross contamination prevention, hand washing and other topics related to proper glove use and “best practices”.

4.2 DELIVERY

- 4.2.1 After award, all deliveries shall be made monthly and all services provided to the locations specified by the participating OVEC member District.
- 4.2.2 The Offeror will provide specific details regarding the time frame for the initial set up, delivery of chemicals and equipment and training to employees. The initial set up and delivery must be completed at a time requested by the participating School Nutrition Director. If needed, it will be requested for current chemical company to remove all dispensing equipment. However, it may be required for awarded vendor to remove existing equipment and place in storage box. Also, depending on existing inventory, a few schools may continue to use current chemicals until inventory is exhausted and then added to new program.

4.3 QUALITY OF PRODUCTS

- 4.3.1 All items must be new and at a minimum, meet the specifications as outlined in section 4.1
- 4.3.2 All products must meet the levels of sanitation required by the health department and school system. Package labeling must be clear and directions in English and Spanish. All products must provide MSDS/SDS information. Detergents must dilute instantly in hot or cold, hard or soft water. Products shall make an effective cleaning solution, which leaves no film or residue and shall not stain or discolor equipment when used at recommended proportions, including ware washing for dish machines.

4.4 REPORTING AND INVOICING

- 4.4.1 Each monthly site visitation to include computerized service reports to include date, time spent at each site and a brief description of the training and services provided. One copy left at the school site and one copy of the report is to be sent to School Nutrition Food Service Coordinator
- 4.4.2 The vendor shall provide pricing that includes all elements which are intended to meet RFP requirements. The price proposed shall be for delivery of the program to all sites on a Set Annual Cost basis. The set annual cost must be identified. Monthly statements must be mailed to the SNP Central Office.
- 4.4.3 Prices proposed are to include delivery to any and all locations in the participating OVEC member districts. Proposals shall not include city, state, or federal taxes (tax exempt certificates will be provided upon request).
- 4.4.4 Prices quoted are to remain firm from July 1, 2020 through June 30, 2021.

- 4.4.5 Invoicing to be 10 equal monthly invoices based upon a fixed annual rate per school.
- 4.4.6 Billing will be done monthly. Monthly invoices will be sent to the designated administrator at each participating School Nutrition Food Service Department. Offeror shall also submit a sample copy of an invoice.

SECTION 5 - INFORMATION FOR OFFERORS TO SUBMIT

All information must be submitted in the following order with numbered pages. Failure to do so may result in the Offeror being deemed non-responsive.

SECTION 1: Signatory and Information Sheets (Pages 18, 19, 20, and 21 of this RFP)

SECTION 2: Executive Summary to include, but not limited to the following (limit 5 pages):

Provide an executive summary that highlights the general history, experience and qualifications of the Offeror. State the bidder's main business activities. State the length of service (years in business) in each of these activities. Provide and name and address of the insurance agency company. Provide proof of insurance regarding general liability, workers' compensation, etc. Describe the bidder's customer support and service capability, corporate philosophy and ability to meet demands of this RFP. Specifically state how your business relates to School Child Nutrition Services.

SECTION 3: Quality and Selection of Products and Service being offered:

Provide a detailed list of all products being offered as stated in SECTION 4 - SCOPE OF WORK/SPECIFICATIONS. Include a product specification sheet of each item listed in Section 4.1.1. Include MSDS/SDS sheets for each chemical. Product samples shall be available upon request.

SECTION 5: Schedule of Delivery and Method:

Provide a detailed description of the implementation of initial equipment installation, ordering, delivery and training as required in SECTION 4 - SCOPE OF WORK/SPECIFICATIONS. The initial equipment installation, ordering, delivery and training must be fully executed upon request of the participating School Nutrition Director.

SECTION 6: Cost, Reporting and Invoicing:

Provide monthly cost per school of entire Food Service Safety/Sanitation System, and also include a sample invoice and sample of reports as required in SECTION 4 - SCOPE OF WORK/SPECIFICATIONS.

Any portions of the submitted proposal that are to be treated by OVEC as **proprietary and confidential information** must be clearly marked as such. Proprietary and confidential information submitted by an Offeror shall not be subject to public disclosure; however, the Offeror must invoke this protection by so stating in writing. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secrets or proprietary information. The classification of the entire proposal document, line item prices and/or total proposal prices as proprietary or trade secret information is not acceptable and may result in rejection of the proposal as nonresponsive. By submission of a proposal, you are guaranteeing that all systems meet the requirements of this RFP.

SUBMITTING REDACTED OFFERS: If your offer includes any information that you marked as "Confidential," "Trade Secret," or "Protected" in accordance with the clause entitled "Submitting Confidential Information," you must also submit one complete copy of your offer from which you have removed or concealed such information (the redacted copy). The redacted copy should (i) reflect the

same pagination as the original, (ii) show the empty space from which information was redacted, and (iii) be submitted on magnetic media. (See clause entitled "Electronic Copies - Required Media and Format.") Except for the information removed or concealed, the redacted copy must be identical to your original offer, and the Procurement Officer must be able to view, search, copy and print the redacted copy without a password.

SECTION 7: Cost Proposal

SECTION 6 - QUALIFICATIONS OF OFFEROR

QUALIFICATIONS OF OFFEROR: Offers shall be considered only from qualified Offerors who are regularly established in the business called for and who in the judgment of OVEC are financially responsible and able to show evidence of their reliability, ability, experience, to render prompt and satisfactory service in the volume called for under this contract.

To be eligible for award, the Offeror must demonstrate: (1) they are qualified in the business called for in this proposal; (2) provide sufficient evidence of responsibility; and (3) meet all material requirements of this RFP.

The successful Offeror must have the capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance. We may also consider a documented commitment from a satisfactory source that will provide you with a capability. We may consider information from any source at any time prior to award. We may elect to consider (i) key personnel, any predecessor business, and any key personnel of any predecessor business, including any facts arising prior to the date a business was established, and/or (ii) any subcontractor you identify. You must promptly furnish satisfactory evidence of responsibility upon request. Unreasonable failure to supply requested information is grounds for rejection.

OVEC reserves the right to make the final determination as to the Offeror's ability to provide the services requested herein.

SECTION 7 - EVALUATION CRITERIA AND AWARD

7.0 EVALUATION

7.0.1 RESPONSIVENESS: Upon receipt of all proposals, by the date and time specified in the RFP, the Procurement Office shall review all proposals for responsiveness to the proposal instructions. OVEC shall retain the right to consider any proposal as non-responsive based solely on its judgment that the proposal does not satisfactorily meet the criteria of the proposal instructions. Those proposals found to be responsive shall be further evaluated by an evaluation committee as follows:

7.0.2 EVALUATION CRITERIA: The following matrix will be applied when evaluating proposal responses.

Cost of Program: to include samples of invoicing and reporting	35 points
Compliance with terms and conditions of RFP	10 points
Background/Experience relevant to RFP/School Child Nutrition	10 points

Quality/Selection of Products and Services being offered	20 points
Ability to train, monitor, and supply products as requested	20 points
Ability to offer additional programs, services, and products	5 points

7.0.3 DISCUSSIONS AND NEGOTIATIONS: Submit your best terms from both a price and a technical standpoint. Your proposal may be evaluated and your offer accepted without any discussions, negotiations, or prior notice. Ordinarily, nonresponsive proposals will be rejected outright without prior notice. Nevertheless, OVEC may elect to conduct discussions, including the possibility of limited proposal revisions, but only for those proposals reasonably susceptible of being selected for award. If improper revisions are submitted during discussions, OVEC may elect to consider only your unrevised initial proposal, provided your initial offer is responsive. OVEC may also elect to conduct negotiations, beginning with the highest ranked offeror, or seek best and final offers. Negotiations may involve both price and matters affecting the scope of the contract, so long as changes are within the general scope of the request for proposals. If negotiations are conducted, OVEC may elect to disregard the negotiations and accept your original proposal.

7.1 AWARD

7.1.1 AWARD TO ONE OFFEROR: Award shall be made to one offeror.

7.1.2 AWARD TO HIGHEST RANKED OFFEROR: Award shall be made to the highest ranked, responsive, and responsible offeror whose offer is determined to be the most advantageous to OVEC member districts.

OVEC REGION SFS DIRECTORS

Sue Bierens
Anchorage Public Schools
11400 Ridge Road
Anchorage, KY 40223
(502) 245-8927 ext. 2129 Fax: (502) 245-2124
sue.bierens@anchorage.kyschools.us

Angela Voyles
Bullitt County Schools
1470 Highway 44 East
Shepherdsville, KY 40165
(502) 869-8050 Fax: (502) 921-9467
angela.voyles@bullitt.kyschools.us

Lisa Gault
Carroll County High School
1706 Highland Avenue
Carrollton, KY 41008
(502) 732-9362 Fax: (502) 732-7100
lisa.gault@carroll.kyschools.us

Jeannie Gilkison
Eminence School
291 West Broadway
Eminence, KY 40019
(502) 845-5427 Ext. 2402 Fax: (502) 845-1310
jeanetta.gilkison@eminence.kyschools.us

Amanda Ponchott
Erlanger-Elsmere
305 Bartlett Avenue – Ensor Annex Bldg.
Erlanger, KY 41018
(859) 342-4690 Fax : (859) 342-4647
amanda.ponchott@erlanger.kyschools.us

Christy Pritchett
Frankfort Independent
506 W. Second Street
Frankfort, KY 40601
(502) 875-8658 ext. 205
Christy.pritchett@frankfort.kyschools.us

Wendy Greenwell
Franklin County Schools
190 Kings Daughters Road
Frankfort KY 40601
(502) 695-6700 ext. 1043 Fax: (502) 352-2255
wendy.greenwell@franklin.kyschools.us

Martha Sebring
Gallatin County Schools
75 Boardwalk
Warsaw, KY 41095
(859) 567-5862 Fax: (859) 567-1920
martha.sebring@gallatin.kyschools.us

Kathy Craven
Grant County School Nutrition Services
1505 North Main Street
Williamstown, KY 41097
(859) 824-2873 Fax: (859) 824-3363
kathy.craven@grant.kyschools.us

Anna Fugate
Henry County Board of Education
326 South Main Street
New Castle, KY 40050
(502) 845-8609 Fax: (502) 845-8619
anna.fugate@henry.kyschools.us

Carlina Loyd
Oldham County Board of Education
6165 Hwy. 146
Crestwood, KY 40014
(502) 241-3500 Fax: (502) 241-3466
carlina.loyd@oldham.kyschools.us

Amy Chappell
Owen County Board of Education
1960 Highway 22 East
Owenton, KY 40359
(502) 484-4002 ext. 4001 Fax: (502) 484-4241
amy.chappell@owen.kyschools.us

Cindy Murphy
Shelby County Board of Education
1155 W. Main Street
Shelbyville, KY 40065
(502) 633-2375 ext. 262 Fax: (502) 647-0246
cindy.murphy@shelby.kyschools.us

Mark Thomas
Spencer County Board of Education
207 W. Main Street
Taylorsville, KY 40071
(502) 477-3250 Fax: (502) 477-3259
mark.thomas@spencer.kyschools.us

Angela Adkins
Trimble County Board of Education
116 Wentworth Avenue
Bedford, KY 40006
(502) 663-0043 Fax: (502) 255-5106
angela.adkins@trimble.kyschools.us

OVEC SCHOOLS

Anchorage School

Bullitt County:

Brooks Elementary
Cedar Grove Elementary
Crossroads Elementary
Freedom Elementary
Lebanon Junction Elementary
Maryville Elementary
Mt. Washington Elementary
Nichols Elementary
Old Mill Elementary
Overdale Elementary
Pleasant Grove Elementary
Roby Elementary
Shepherdsville Elementary
Bernheim Middle
Bullitt Lick Middle
Eastside Middle
Hebron Middle
Mt. Washington Middle
Zoneton Middle
Bullitt Central High
Bullitt East High
North Bullitt High
Riverview Opportunity Ctr

Carroll County:

Kathryn Winn Elementary
Cartmell Elementary
Carroll County Middle School
Carroll County High School

Eminence Independent

Erlanger-Elsmere Independent:

Arnett Elementary
Howell Elementary
Lindeman Elementary
Miles Elementary
Tichenor Middle
Lloyd Memorial High
N. KY Coop for Educ. Services

Frankfort Independent:

Frankfort High School
Second Street School

Franklin County:

Early Learning Village
Bridgeport Elementary
Collins Lane Elementary
Elkhorn Elementary
Hearn Elementary
Peaks Mill Elementary
Westridge Elementary
Bondurant Middle
Elkhorn Middle
Franklin County High
Western Hills High

Gallatin County:

Gallatin County Elementary
Gallatin County High
Gallatin County Middle

Grant County:

Crittenden/Mt. Zion Elementary
Dry Ridge Elementary
Mason Corinth Elementary
Sherman Elementary
Grant County Middle
Grant County High

Henry County:

Campbellsburg Elementary
Eastern Elementary
New Castle Elementary
Henry County Middle
Henry County High

Oldham County:

Leopard Spot Daycare
Buckner Elementary
Camden Station Elementary
Centerfield Elementary
Crestwood Elementary
Goshen Elementary at Hillcrest
Harmony Elementary
Kenwood Station Elementary
LaGrange Elementary
Liberty Elementary
Locust Grove Elementary
East Oldham Middle
North Oldham Middle
Oldham County Middle
South Oldham Middle
North Oldham High
Oldham County High
South Oldham High

Owen County:

Owen County Lower Elementary
Owen County Upper Elementary
Maurice Bowling Middle
Owen County High

Shelby County:

Northside Early Childhood
Clear Creek Elementary
Heritage Elementary
Painted Stone Elementary
Simpsonville Elementary
Southside Elementary
Wright Elementary
Marnel C Moorman School
Shelby County East Middle
Shelby County West Middle
Martha Layne Collins High
Shelby County High

Spencer County:

Spencer County Elementary
Taylorsville Elementary
Spencer County Middle
Spencer County High

Trimble County:

Bedford Elementary
Milton Elementary
Trimble County Jr./Sr. High

**AUTHENTICATION OF BID AND STATEMENT OF NON-COLLUSION AND NON-CONFLICT OF INTEREST
AND COMPLIANCE WITH THE KENTUCKY MODEL PROCUREMENT CODE:**

By my signature, I hereby swear or affirm under penalty of false swearing as provided by KRS 523.040:

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

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

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

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

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

SIGNATURE: _____

COMPANY: _____

DATE: _____

CERTIFICATION REGARDING LOBBYING

CERTIFICATION FOR CONTRACTS, GRANTS, AND COOPERATIVE AGREEMENTS

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

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

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

PRINTED NAME: _____

SIGNATURE: _____

TITLE: _____

COMPANY: _____

DATE: _____

CERTIFICATION CONCERNING DISBARMENT AND SUSPENSION

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

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

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

BID CERTIFICATION

I hereby certify with my signature below that costs quoted in this RFP are correct and that I have authority to obligate my company to perform under the conditions stated in the bid document.

SIGNATURE: _____

COMPANY: _____

DATE: _____

STATEMENT OF SUBMISSION

We have read all the conditions and requirements of the bid and have signed statements of Authentication, Non-Collusion, and Non-Conflict of Interest. We have submitted prices and agree to make delivery free of additional charges.

In submitting this RFP, it is expressly agreed that, upon proper acceptance by the Ohio Valley Educational Cooperative of any or all items bid, a contract shall thereby be created with respect to the items accepted.

_____	_____
Bidding Firm	Authorized Signature
_____	_____
Sales Contact Name	Printed Name of Authorized Signer
_____	_____
Sales Contact Email Address	Phone # (Toll Free – if applicable)
_____	_____
Fax # (Toll Free – if applicable)	Address
_____	_____
City, State, Zip	Date



Food and
Nutrition
Service

DATE: June 30, 2017

MEMO CODE: SP 38-2017

Park Office
Center

SUBJECT: Compliance with and Enforcement of the Buy American Provision
in the National School Lunch Program

3101 Park
Center Drive
Alexandria
VA 22302

TO: Regional Directors
Special Nutrition Programs
All Regions

State Directors
Child Nutrition Programs
All States

The Food and Nutrition Service (FNS) has continued to receive a number of inquiries relating to the details and enforcement of the Buy American provision in 7 CFR 210.21(d). This memorandum replaces SP 24-2016, *Compliance with and Enforcement of the Buy American Provision in the National School Lunch Program*, dated February 03, 2016. This guidance provides several updates, including suggested contract language to be utilized in solicitations, and serves to reinforce the importance of the Buy American provision to our economy and its positive effects on small and local businesses.

Buy American provision requirements. Section 104(d) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Public Law 105-336) added a provision, Section 12(n) to the National School Lunch Act (NSLA) (42 USC 1760(n)), requiring school food authorities (SFAs) to purchase, to the maximum extent practicable, domestic commodities or products. This Buy American provision supports the mission of the Child Nutrition Programs, which is to serve children nutritious meals and support American agriculture.

The Buy American provision applies to SFAs located in the 48 contiguous United States and is one of the procurement standards these SFAs must comply with when purchasing commercial food products served in the school meals programs. Although Alaska, Hawaii, and the U.S. territories are exempt from the Buy American provision, SFAs in Hawaii are required to purchase food products produced in Hawaii in sufficient quantities, as determined by the SFA, to meet school meal program needs per 7 CFR 210.21(d)(3). Likewise, SFAs in Puerto Rico are required to purchase food products produced in Puerto Rico in sufficient quantities, under 42 USC 1760(n)(4).

Section 12(n) of the NSLA defines “domestic commodity or product” as an agricultural commodity that is produced in the U.S. and a food product that is processed in the U.S. substantially using agricultural commodities produced in the U.S. Report language accompanying the legislation noted that “substantially means over 51% from American products.” Therefore, over 51% of the final processed product (by weight or volume) must consist of agricultural commodities that were grown domestically. Thus, for foods that are unprocessed, agricultural commodities must be domestic, and for foods that are processed, they

must be processed domestically using domestic agricultural food components that are comprised of over 51% domestically grown items, by weight or volume as determined by the SFA.

For products procured by SFAs for use in the Child Nutrition Programs using nonprofit food service account funds, the product's food component is considered the agricultural commodity. FNS defines food component as one of the food groups which comprises reimbursable meals. The food components are: meats/meat alternates, grains, vegetables, fruits, and fluid milk. Please refer to 7 CFR 210.2 for full definitions. Any product processed by a winning vendor must contain over 51% of the product's food component, by weight or volume, from U.S. origin. This definition of domestic product serves both the needs of schools and American agriculture. Products from Guam, American Samoa, Virgin Islands, Puerto Rico, and the Northern Mariana Islands are considered domestic products under this provision as these products are from the territories of the U.S.

Implementing the Buy American provision. SFAs are reminded that for all procurement transactions for food when funds are used from the nonprofit food service account, whether directly by an SFA or on its behalf, procurement transactions must comply with the Buy American provision. Implementation of the Buy American provision should be done by: including Buy American in documented procurement procedures, State agency prototypes documents, and all procurement solicitations and contracts; including domestic requirements in bid specifications; contract monitoring; and verifying cost and availability of domestic and non-domestic foods using data in the USDA Agricultural Marketing Service's (AMS) weekly market report at <https://marketnews.usda.gov/mnp/fv-report-config-step1?type=termPrice>.

The Buy American provision supports local and small businesses. Using food products from local sources supports local farmers and provides healthy choices for children in the school meal programs while supporting the local economy. Requiring compliance with the Buy American provision also supports SFAs working with local, or small, minority, and women-owned businesses as required by Federal regulations (see 2 CFR 200.321). FNS also encourages purchasing food products from local and regional sources when expanding farm to school efforts.

USDA Foods comply with Buy American requirements. FNS encourages SFAs to maximize their use of USDA Foods, which comply with Buy American requirements. USDA Foods are domestic, and purchasing from 100% domestic origin sources is a longstanding USDA policy based on Section 32 of the Agriculture Act of 1935 (P.L. 74-320 as amended; 7 U.S. Code 612c). However, processed end products that contain USDA Foods need to meet the 51% domestic requirement, by weight or volume.

Limited exceptions to the Buy American provision. There are limited exceptions to the Buy American provision which allow for the purchase of foods not meeting the “domestic” standard as described above (i.e., “non-domestic”) in circumstances when use of domestic foods is truly not practicable. These exceptions, as determined by the SFA, are:

- The product is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality; or
- Competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product.

It should be noted that FNS has not defined a dollar amount or percentage triggering an exception requiring consideration of alternatives. Before utilizing an exception, alternatives to purchasing non-domestic food products should be considered. For example, SFAs should ask:

- Are there other domestic sources for this product?
- Is there a domestic product that could be easily substituted, if the non-domestic product is less expensive (e.g. substitute domestic pears for non-domestic apples)?
- Am I soliciting bids for this product at the best time of year? If I contracted earlier or later in the season, would prices and/or availability change?
- Am I using third-party verification, such as through USDA AMS, to determine the cost and availability of domestic and nondomestic foods?

If an SFA is using one of the above exceptions, there is no requirement to request a waiver from the State agency or FNS in order to purchase a non-domestic product. SFAs must, however, keep documentation justifying their use of exception(s). FNS has provided sample language of such, to be used as a reference in solicitation and contract documents; these are found in Question 5 in the Questions and Answers document below. Monitoring of contractors by the SFA and oversight by the State agency are critical functions in enforcing the Buy American provision, including review of exceptions, as further outlined below.

Compliance with, and monitoring of, the Buy American provision by SFAs. To ensure compliance with the Buy American provision the SFA must ensure solicitation and contract language includes the requirement for domestic agricultural commodities and products. The SFA must also include the Buy American requirement in its documented procurement procedures and retain records documenting any exceptions. SFAs should ask the supplier, i.e., manufacturer or distributor, for specific information about the percentage of U.S. content in any processed end product. In order for SFAs to be able to document the domestic content, they should include in their procurement process a requirement for certifying the domestic percentage of the agricultural food component of commodities and products.

Further, solicitation and contract language must be monitored by the SFA to determine contractor compliance as required by 2 CFR 200.318(b), in order to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. Monitoring is also accomplished by reviewing products and delivery invoices

or receipts to ensure the domestic food that was solicited and awarded is the food that is received. SFAs also need to conduct a periodic review of storage facilities, freezers, refrigerators, dry storage, and warehouses to ensure the products received are the ones solicited, and awarded, and comply with the Buy American provision.

Monitoring of the Buy American provision by State agencies. State agencies conducting procurement reviews in conjunction with, or as a separate review from, the administrative review process must ensure SFA compliance with the Buy American provision. During a procurement review, State agencies should: (1) determine if SFAs are purchasing domestic commodities as defined in 7 CFR 210.21(d); (2) check that solicitations and contracts contain the Buy American certification language recommended in Questions 6 and 7 below; and (3) review a sample of supplier invoices or receipts to determine whether the solicited-for domestic foods were provided by the awarded contractor. If the SFA is non-compliant with the Buy American provision, the State agency must issue a finding and require corrective action which may include:

- Requiring contract amendments to include language to supply domestic foods, or a new solicitation if the contract amendment is determined, by the contracting parties or State agency, to be a material change;
- Attending a procurement training to increase compliance with procurement standards, including the Buy American provision; and
- Fiscal action for repeat or egregious findings, on a case-by-case basis with approval by the appropriate FNS Regional Office.

During an on-site administrative review, State agencies should look at the labels on a variety of food products in SFA storage facilities and if the State agency identifies non-domestic foods, the State agency must request documentation justifying the limited exception(s) outlined above. If such is not provided, the State agency must issue a finding and require corrective action, which may include:

- Requiring review of food deliveries for contractor compliance;
- Monitoring to ensure the correct domestic food components contracted for are delivered;
- Prior to accepting foods, ensuring that an alternative domestic food component, or an exception to purchase non-domestic foods, has been approved for delivery; and
- Fiscal action for repeat or egregious findings, on a case-by-case basis with approval by the appropriate FNS Regional Office.

Both the administrative review and procurement review teams should work together and communicate findings in order to provide comprehensive monitoring of the Buy American requirement.

Regional and State Directors
Page 5

State agencies are reminded to distribute this memorandum to SFAs immediately. SFAs should direct any questions concerning this guidance to their State agency. State agencies with questions should contact the appropriate FNS Regional Office.

Original Signed

Sarah E. Smith-Holmes
Director
Program Monitoring and Operational Support
Child Nutrition Programs

Questions and Answers for the Buy American Provision

1) How would an SFA determine that an item is a “domestic commodity or product”?

Answer: To determine if a food item meets the Buy American provision, the SFA would need to ensure that the solicited-for domestic foods were included in the vendor response, and provided by the awarded contractor in the foods delivered to the SFA. Section 12(n) of the NSLA defines “domestic commodity or product” as an agricultural commodity produced in the U.S. and a food product processed in the U.S. substantially using agricultural commodities that are produced in the U.S. Reports accompanying the legislation noted that “substantially means over 51% from American products.”

For products procured by SFAs for use in the Child Nutrition Programs, the food component of the product is the agricultural commodity. FNS defines food component as one of the food groups which comprise reimbursable meals. The food components are: meats/meat alternates, grains, vegetables, fruits, and fluid milk. Please refer to 7 CFR 210.2 and 210.10 for full definitions and use of the terms, respectively. Any product processed by a responsive vendor must contain over 51% of the food component, by weight or volume, from U.S. origin.

When considering juice for example, in order for the product to be considered “domestic” in accordance with the Buy American provision, the juice must contain over 51% of the juice or juice concentrate, by volume, from fruits or vegetables grown in the U.S. FNS does not consider water – whether tap or bottled – to be a domestically grown agricultural commodity for purposes of this provision. Likewise, packaging and labor are not agricultural commodities. For products procured by SFAs to be served in the Child Nutrition Programs, the fruit/vegetable component of the product, by volume, is the agricultural commodity. For fruit/vegetable juices, in order to be considered responsive, the juice provided by a vendor must contain over 51% of the fruit/vegetable component of the juice, by volume, from U.S. origin.

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

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

3) Are all agricultural commodity or food products purchased using the nonprofit food service account subject to the Buy American provision?

Answer: Yes. SFAs must ensure that all agricultural commodity or food products procured using funds from the nonprofit school food service account comply with the Buy American provision. Pursuant to Child Nutrition Program regulations, all Federal funds, all money received from children as payment for program meals, all proceeds from the sale of competitive foods, and all other income generated by the school food service must accrue to the nonprofit food service account. As a consequence, the entire nonprofit school food service account becomes subject to Federal procurement standards. Therefore, all agricultural commodity or food product purchases made from the nonprofit school food service account are subject to the

Buy American provision, subject to the limited exceptions noted in the memorandum above.

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

Answer: To ensure compliance with the Buy American provision the SFA must ensure solicitations and contracts include the requirement for domestic agricultural commodities and products, include this requirement in its documented procurement procedures, and retain records documenting any exceptions. Examples of specifications that SFAs may use in solicitations and contracts to comply with the Buy American provision include:

- Utilizing the Buy American definitions in 7 CFR 210.21(d) in all food product specifications, invitations for bids (IFBs), and requests for proposals (RFPs) for food products, contracts, purchase orders, and other procurement documents issued;
- Require a certification of domestic origin for products which do not have country of origin labels; and
- Including the following language: “The District/State agency/Territory participates in the National School Lunch Program and School Breakfast Program and is required to use the nonprofit food service funds, to the maximum extent practicable, to buy domestic commodities or products for Program meals. A ‘domestic commodity or product’ is defined as one that is either produced in the U.S. or is processed in the U.S. substantially using agricultural commodities that are produced in the U.S. as provided in 7 CFR 210.21(d).”

Additionally, SFAs are required by 2 CFR 200.318(b) to monitor contractor performance to ensure compliance with all contractual requirements. This includes compliance with the Buy American provision. SFAs can also require their suppliers to provide certification of domestic origin on food products delivered and on invoices submitted as discussed in more detail in Questions 6 and 7, below.

For example, Program operators may require vendors to provide a certification of domestic origin for all food products listed in all procurement documentation, from a bid or proposal to receipts and invoices. Program operators may deem a bid or response unresponsive and ineligible for contract award for noncompliance with the terms and conditions of contract award, if such certifications are solicited for, but not included. Further, the program operator may establish penalties, including contract termination, if vendors fail to comply with the Buy American provision and no documentation of any exceptions exists.

5) How can SFAs comply with the requirement to retain records, which should include documentation of exceptions in adhering to the Buy American provision?

Answer: Below is sample language that SFAs should use in solicitations and contracts to comply with the requirement to retain records documenting any exceptions to the Buy American provision:

- I. Exceptions to the Buy American provision are very limited; however, an alternative or exception may be approved upon request. To be considered for an alternative or exception, the request must be submitted in writing to a designated official, a minimum of ___day (s) in advance of delivery. The request must include the:

- (1) Alternative substitute(s) that are domestic and meet the required specifications:
 - (a) Price of the domestic food alternative substitute(s); and
 - (b) Availability of the domestic alternative substitute(s) in relation to the quantity ordered.
- (2) Reason for exception: limited/lack of availability or price (include price):
 - (a) Price of the domestic food product; and
 - (b) Price of the non-domestic product that meets the required specification of the domestic product.

SFAs may document exceptions by maintaining records of communications between them and their food supplier; this may include emails, documentation of telephone communications, etc. The documentation must be maintained for review by the State agency during procurement reviews of local agency procurement practices.

One resource SFAs and State agencies may use in order to document exceptions is the market news reports available from AMS. AMS provides free, unbiased price and sales information on farm commodities at: <https://marketnews.usda.gov/mnp/fv-report-config-step1?type=termPrice>. Using this website, SFAs and State agencies can find third-party verification of cost and availability of domestic and nondomestic foods. Further, SFAs may use the information to communicate alternatives with food suppliers and document purchase decisions.

6) What is sample language contractors can use to document their compliance with the Buy American provision?

Answer: Below is sample language contractors may use to comply with the Buy American provision; however, language should be tailored to the needs of the contracting parties.

Sample Language:

“We certify that ___(insert product name)___ was processed in the U.S. and contains over 51% of its agricultural food component, by weight or volume, from the U.S.,” with space for the supplier to fill in the name of the product and its specific percentage of the domestic agricultural food component contained therein.

7) How should an SFA document the domestic commodity food components for a processed end product?

Answer: SFAs should ask the supplier, i.e., manufacturer or distributor, for specific information about the percentage of U.S. content in the processed end product. In order for SFAs to be able to document the domestic content, they should include in their bidding process a requirement for certification such as: “We require that suppliers certify the food product was processed in the U.S. and certify the percentage of U.S. content, by weight or volume, in the food component of processed food products supplied to us.”

SFAs may also include the following statement in the bidding process: “We require bidders to certify that ___(insert product name)___ was processed in the U.S. and contains over ___(insert % of weight or volume) of its agricultural food component from the U.S.,” with

space for the supplier to fill in the name of the product and its percentage of the domestic agricultural food component (by weight or volume) contained therein.

State agencies should also include such language in any prototype solicitation documents and contracts provided to the SFAs.

8) Can a product made from a U.S. agricultural product but manufactured in another country be purchased from the nonprofit school food service account absent a limited exception?

Answer: No. Section 12(n) of the National School Lunch Act defines “domestic commodity or product” as one that is produced and *processed* in the U.S. substantially using agricultural commodities that are produced in the U.S.” This means that the product must be processed entirely in the U.S. and must substantially use domestic agricultural commodities. A large number of items received by schools state on the label that they are “packed” in the U.S. Non-domestic foods packed in the U.S. or non-domestic foods in packaging produced in the U.S. do not meet the Buy American requirements.

9) Can FNS or a State agency provide a list of foods that are not available domestically and therefore not subject to the Buy American provision?

Answer: No. Neither FNS nor a State agency may make the determination that a domestic commodity or product is not available. Although the Federal Acquisition Regulations (FAR) contain such a list, this applies to procurement by the Federal government only. Each SFA should determine on an individual basis, whether domestic alternatives exist first, and if not, whether an exception is warranted. Exceptions are warranted only when (1) the food product is not produced or manufactured in the U.S. in sufficient and reasonably available quantities of a satisfactory quality; or (2) competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product. Again, there is not a specific amount or percentage that is considered “significantly higher” and it is the SFA’s responsibility to determine the threshold. Records and documentation must be retained justifying any exception as outlined above. SFAs can maintain documentation of exceptions for domestic foods that are prohibitively costly or not available in sufficient quantities and present this during reviews by the State agency.