



SOLICITATION INFORMATION, REQUIREMENTS, TERMS AND CONDITIONS

GENERAL CONDITIONS

REQUEST FOR QUOTES, REQUEST FOR PROPOSALS, INVITATIONS FOR BID, REQUESTS FOR QUALIFICATIONS.

A1. GENERAL

- 1.1. These GENERAL CONDITIONS shall be applicable to and govern the bidder's response to this solicitation and may be incorporated into the award and contract.
- 1.2. By accepting these GENERAL CONDITIONS, the *Bidder* acknowledges that he/she has read, understands, and agrees to the requirements of this solicitation.
- 1.3. **Union Public Schools is an equal opportunity employer** and complies with all applicable federal and state civil rights statutes, laws, and regulations. Discrimination is prohibited against any person in recruitment, selection, promotion, transfer, retention, discipline, pay or other terms and conditions of employment, in access to facilities, in treatment of individuals with disabilities, or in any aspect of operations, because of race, age, color, religion, national origin, pregnancy, gender, gender expression or identity, sex, sexual orientation, disability, genetic information, or veteran status. Discrimination is a violation of the law and will not be condoned or tolerated in the district. See also notice at [Equal Opportunity - Union Public School District I-009 \(unionps.org\)](https://www.unionps.org/equal-opportunity).

A2. DEFINITIONS

- 2.1. **Addendum** a written change, addition, alternation, correction, or revisions to a solicitation and/or contract.
- 2.2. **Amendment** means a written change, addition, correction, or revision to the solicitation.
- 2.3. **Bid** means an offer submitted by a Bidder in response to an Invitation for Bid. It may be an offer in response to an RFP, RFQ, RFQL, or IFB (see also Solicitation).
- 2.4. **Bidder** is the individual, person, or entity that submits a response offer to this solicitation.
- 2.5. **Contract** means the written, mutually agreed upon and binding legal agreement by and between bidder and school district, as a result of award of this solicitation.
- 2.6. **Contract Document** shall mean the school district's purchase order and/or separate written agreement(s) by and between the successful bidder and the school district. Unless specifically removed in writing within the final contract documents, these GENERAL CONDITIONS shall be incorporated into the purchase order or written separate agreement.
- 2.7. **Customer** shall mean the school, department or school employee ordering and receiving the goods or services.
- 2.8. **District or the school district** shall mean Independent School District Number Nine of Tulsa County, Oklahoma, Union Public Schools.
- 2.9. **Debarment** shall mean any action taken by a debarring official under federal or state law or regulations that exclude the bidder and/or any business entity from inclusion on the Supplier list for bidding; offering to bid or quote; or receiving an award and contract from the school district. It may also apply to existing purchase orders, orders, and contracts with the school district.
- 2.10. **Destination** shall mean the school districts distribution center receiving dock or other school, building or location as designated on the purchase order or separate contract.
- 2.11. **Indemnified Parties** shall mean Independent School District Number of Tulsa, County, Oklahoma, Union Public Schools, the District, the school district, and the board of education of the school district, its directors, agents, employees, representatives, contractors, assignees, and designees thereof.
- 2.12. **Inspection** shall mean examining and testing equipment, materials, suppliers, or services to determine whether such conform to the contract requirements and/or are acceptable to the school district.
- 2.13. **Late bid, proposal or quote** means a bid that was not received by the due date and time specified the school district's solicitation.
- 2.14. **Non-responsive bid** means a response to a solicitation that does not conform to the mandatory or essential requirements of the solicitation.
- 2.15. **Offer** means your response (proposal, bid, quote) to this solicitation. Response and offer may be used interchangeably.
- 2.16. **Purchase Order** is the school district's written offer to purchase and contract to validate the proper encumbrance of funds as required by the State of Oklahoma and formalize the terms and conditions of the purchase of goods and services, including, but not limited to, statements of work, descriptions of goods and services, quantity, pricing, delivery requirements and terms, and terms of payment with the selected Supplier.
- 2.17. **Purchase Order Terms** mean the school district's purchase order terms as referenced on www.unionps.org.
- 2.18. **Solicitation** means an Invitation for Bid (IFB), a Request for Qualifications (RFQL), a Request for Quote (RFQ), a Request for Proposal (RFP), or a telephone or emailed request for quotes or pricing.
- 2.19. **Supplier** means the Successful Bidder, or a selected entity awarded a contract or issued a purchase order for goods and services from the school district.



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- 2.20. **Suspension** means action taken by a suspending official under federal or state law or regulation to suspend a Supplier from inclusion in the Supplier list; be eligible to submit Bids to the school district; be awarded a contract by the school district subject to the school district's purchasing policy or state and federal laws or regulations.
- 2.21. **Successful bidder** means the Bidder whose solicitation offer, bid, quote was awarded with a purchase order or contract issued.
- 2.22. **Unsuccessful bidder** means a Bidder(s) whose bids were not accepted or not awarded.
- 2.23. **Work Product** means any and all deliverables produced by Supplier under a statement of work or similar Contract Document issued pursuant to this Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the Contract effective date including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided by or on behalf of Supplier under the Contract and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use of benefit of Customer in connection with this Contract or with funds appropriated by or for Customer or Customer's benefit (a) by any Supplier personnel or Customer personnel or (b) any Customer personnel who then became personnel to Supplier or any of its affiliates or subcontractors, where, although creation or reduction-to practice is completed while the person is affiliated with Supplier or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.
- 2.24. **You / Your** mean the bidder.

A3. SOURCING METHOD REQUIREMENTS

- 3.1. **Offer.** Your offer may be withdrawn at any time prior to the expiration and/or due date of the solicitation as permitted by the eProcurement solution.
 - 3.1.1. Your offer may be accepted or rejected in whole or in part by the school district.
 - 3.1.2. Your offer must be responsive to the solicitation.
 - 3.1.3. Your offer shall remain valid for not less than less than ninety (90) calendar days after the closing date and time of the solicitation, or longer if specified separately within the solicitation. You may submit a shorter offer term within your response. Alternate offers may be rejected or accepted by the school district.
 - 3.1.4. After the solicitation has closed/expired, your offer cannot be amended, changed, or withdrawn.
 - 3.1.5. If you attempt to cancel, change, or withdraw your offer after you have been awarded, the school district shall the right to terminate the award, cancel the purchase order, award to the next lowest responsive bidder, rebid the project, or seek alternate means for sourcing the project.
 - 3.1.6. If the solicitation allows for a blended submission, all pages, terms, conditions, special provision, bid forms and pricing must be received by the deadline (closing time) of the solicitation.
 - 3.1.7. Blended-type responses, i.e., electronic, or manual, will only be permitted if so, stated on the eProcurement solicitation.
- 3.2. **Right to Cancel, Terminate, Reject, and Change.** The school district reserves the right to:
 - 3.2.1. Reject any or all offers and/or waive any irregularities, informalities or technicalities within any offer received.
 - 3.2.2. Terminate and/or cancel this solicitation at any time.
 - 3.2.3. Make changes to this solicitation at any time before the closing/expiration date and time.
 - 3.2.4. Union Public Schools reserves the right to cancel and terminate any resulting contract, in part or in whole, should the District determine that it is in the best interest and at the convenience of the District to do so.
- 3.3. **Award.** Award shall be based on the type of sourcing method used. Generally, the following shall apply.
 - 3.3.1. IFBs – Awarded to lowest responsive and responsible bidder. If method of award is specifically defined by Oklahoma for federal statute, award will be based on the statute.
 - 3.3.2. RFPs – Awarded to the responsive and responsible bidder whose proposal is most advantageous to the school district with price and other factors considered. Evaluation criteria and points will be specified in Special Terms and Conditions (Special Provisions) section of the solicitation.
 - 3.3.3. RFQs – Either award criteria for IFBs or RFPs depending on the requirements of the solicitation.
 - 3.3.4. RFQLs – Selections based on qualifications and evaluation criteria specific to the method.
 - 3.3.5. RFIs – Not an awarded method.



- 3.3.6. Bids may be awarded based on the lowest unit price per item or items may be combined for an aggregate awarded at the school districts discretion. Bids may be rejected in whole or in part. All or nothing bids may be disqualified. The school district reserves the right to make award, in whole or in part, whichever is in its best interest
- 3.4. **Bidder Qualifications.** The school district may use any or all of the following any and/or all of the following factors in determining whether a bidder is considered to be qualified, responsible, and responsive.
 - 3.4.1. The ability, capacity, and skill of the Bidder to perform the contract or provide the services requested.
 - 3.4.2. The Bidder's ability to provide the services and/or furnish goods promptly or within the time frame required.
 - 3.4.3. The character, integrity, reputation, judgment, experience, and efficiency of the Bidder.
 - 3.4.4. Past performance of the bidder or manufacturer with the school district.
 - 3.4.5. The Bidder's compliance with the laws and ordinances.
 - 3.4.6. The sufficiency of the Bidder's financial resources.
 - 3.4.7. The Bidder's conformance to the solicitation's product and service specifications and requirements, and the quality, availability, adaptability, the products, and services the Bidder offers.
 - 3.4.8. The Bidders ability to furnish warranty service, local sales, and service, and/or maintenance for the products or equipment offered.
 - 3.4.9. The Bidder's delivery scheduled offer.
 - 3.4.10. The Bidder's completion and submission of the bid solicitation package.
 - 3.4.11. The Bidder's ability to furnish alternate products and/or services as required.
 - 3.4.12. The Bidder's agreement to firm-fixed pricing as specified.
 - 3.4.13. Submission of Supplier registration information and W-9.
 - 3.4.14. Other factors which are determined to be in the school district's best interest.
- 3.5. **Tie bids.**
 - 3.5.1. In the event of a tie bid, the school district may award based on the best delivery schedule offered in the bidder's response.
 - 3.5.2. The school district reserves the right to award a tie bid based on geographic preference given to local and Oklahoma entities.
- 3.6. **Prohibited Bidder Actions.**
 - 3.6.1. Each Bidder shall ensure that no improper, unethical, or illegal relationships or conflict of interest exist between or among the Bidder, District personnel or board member of the District.
 - 3.6.2. No negotiations, decisions, or actions shall be initiated by any bidder as a result of any verbal discussion with any school district employee or consultant prior to the opening of responses to this document.
 - 3.6.3. Except for conducting existing business, bidders shall have no contact, either written or verbal, with any school district employee, (including the District's Board of Education members, the school district's legal counsel, the school district's Superintendent of Schools, or other employee). Questions shall be submitted using the e-Procurement solution or emailing the school district's designated buyer or representative named herein, during the period beginning with the issuance of this document through approval of award.
- 3.7. **Ethics in Public Contracting.**
 - 3.7.1. By submitting an offer, you hereby attest to the following:
 - 3.7.1.1. Your offer has been prepared independently and without any collusion and fraud by and between a school district employee and your company, or by and between you and a competing Bidder or potentially competing bidder.
 - 3.7.1.2. No employee, agent, owner, principal, or representative of your company has offered any bribes, inducements, favors, gratuities, or anything of value to any school district employee to influence the award of this solicitation or in exchange for favoritism in evaluating and awarding this solicitation.
 - 3.7.1.3. No employee, agent, owner, principal, or representative of your company has assisted any employee of the school district in developing the specifications, scope of work, or the requirements of this solicitation.
 - 3.7.1.4. If a non-collusion statement is attached, you must submit a properly executed non-collusion affidavit your offer.
- 3.8. **Required Affidavits for Sealed Bids and Proposals.**
 - 3.8.1. Responses to IFBs and RFPs must include a signed and notarized non-collusion and business relationship affidavit. Electronic and copied signatures and notarization authentications will be permitted; however, the school district reserves the right to request the "wet" signed document from any or all bidders. The "wet" signed documents shall not be withheld from the school district and shall be provided within five (5) business days from the request.



3.9. Specifications and Requirements.

- 3.9.1. The specifications provided in this solicitation are intended to describe the item(s) and/or services requested; however, said specifications and requirements are not intended to limit, exclude, or take precedence over a manufacturer's specifications.
- 3.9.2. References to a manufacturer's brand name, trade name, information, part numbers, and catalog numbers may be provided to describe and establish the general quality, functionality, and features of the desired items. These references are not intended to limit or prohibit competition. A bidder may offer any brand or model for consideration, provided such alternate materially meets or exceeds the specifications.
- 3.9.3. The school district maintains full rights in determining whether an alternate meets or exceeds the specifications required, i.e., approves the alternate as equal.
- 3.9.4. For responses involving alternate products, the bidder must include (upload) the manufacturer's product literature, information, and specifications.
- 3.9.5. When Brand, Trade Names, and associated part numbers or catalog numbers are specified, the bidder may submit an alternate bid for consideration as "EQUIVALENT" or consideration for as an "APPROVED EQUAL." Said references shall mean any other make, equal in material, workmanship, and service, and is as efficient and economical in operations, function, and features.
- 3.9.6. Where the school district has established standardization on products or materials or where OEM parts are required, alternates may be limited or restricted.
- 3.9.7. Bidder warrants that all merchandise will materially conform to the description and applicable specifications and shall be good merchantable quality and fit for the specified purpose for which it is sold. This warranty shall be in addition to any standard warrant or service provided by the Seller to the Buyer.
- 3.9.8. Unless specified elsewhere herein, all bids must be for goods which are factory new. No reconditioned, remanufactured, used, demonstration models, or otherwise previously owned or used shall be permitted or considered.

3.10. Federal Procurement. As applicable to all child nutrition solicitations for goods and services, and other federally funded projects, the bidder must comply with and agree to the following requirements of the USDA (for child nutrition solicitations) and Appendix II of 2 CFR Part 200 – CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS. SECTION (A) – (L).

- 3.10.1. (A) Contracts over \$250,000. All contracts over \$250,000 shall include administrative, contractual, or legal remedies for contractor's violation or breach of contract terms and provide sanctions and penalties for violation and breach of such.
- 3.10.2. (B) Contracts over \$10,000. For all contracts over \$10,000 involving federal funds, the school district shall have the right to terminate for cause and convenience and address the basis for settlement in any resulting contract or agreement. The school district may terminate a successful bidder's award and contract and/or cancel purchase order(s) by providing the successful bidder with a seven (7) day written notice. The school district shall only be required to pay for the goods and services received prior to the termination and/or cancellation. Any goods that are custom or uniquely produced by the supplier pursuant to a bona fide order submitted by the school district before the termination and/or cancellation must be delivered in accordance with the order terms and conditions. The school district shall only be required to pay the successful supplier for the custom or uniquely produced goods which conform to the order requirements; are delivered in a timely manner; and have been received and determined to be acceptable by the school district.
- 3.10.3. (C) Equal Opportunity Employer.
 - 3.10.3.1. By responding to this solicitation, the Bidder acknowledges that it is an Equal Opportunity Employer. The Bidder agrees that it does not and will not discriminate against any employee or applicant for employment based on race, color, sex (including pregnancy, gender identity, and sexual orientation), religion, national origin, age (40 or older), genetic information, or disability.
Furthermore, except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p 339) as amended by Executive Order 11375, relating to amending EO 11246 and implementing 41 CFR part 60.
 - 3.10.3.2. Union Public Schools is an Equal Opportunity Employer. The school district does not and will not discriminate against any applicant for employment or employee based on race, color, sex (including pregnancy, gender identity, and sexual orientation), religion, national origin, age (40 or older), genetic information, or disability.
- 3.10.4. (D) Davis-Bacon Act, as amended. For all prime construction contracts in excess \$2,000 involving Federal Funds, the awarded to the successful bidder shall comply 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 Contractors Covering Federally Financed and Assisted Construction"). Contractors shall 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.



- 3.10.4.1. Copeland “Anti-Kickback Act” (40 U.S. C. 3145) and as supplemented by Department of Labor regulations (29 CFR Part 3). The successful bidder, its contractors, and subcontractors, employed, hired or contracted to perform any public building or public work projects, which are financed in whole or in-part by the school district using federal funds, shall 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.
- 3.10.5. (E) Contract Work Hours and Safety Standards Act (40 U.S. C. 3701-3708). For all contracts over \$100,000 involving the employment of mechanics or laborers, the successful bidder agrees to comply 40 U.S.C. 3702 and 3704, as supplemented by the Department of Labor regulations (29 CFR Part 5), regarding payment based on the standard work week of 40 hours. Work performed in excess of the standard work week provided the employee is paid at a rate of not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. These requirements of 40 U.S.C. 3704 are applicable to construction and provide that no laborer or mechanic must be required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous. **These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.**
- 3.10.6. (F) Rights to Inventions Made Under a Contract or Agreement. If the solicitation and/or the successful bidder’s response involves substitution of parties, assignment or performance of experimental, developmental, or research work under the federal funding award, the recipient or subrecipient, including the successful bidder, if applicable, shall comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organization and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and implementation of any the awarding agency.
- 3.10.7. (G) Clean Air Act, Clean Water Act - Federal Water Pollution Control Act (33 U.S. C. 1251-1387), Executive Orders and EPA Regulation as amended. Applicable to all contacts in excess of \$150,000, the successful bidder agrees to comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857, Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and the Environmental Protection Agency (EPA) Regulation (40 CFR § 15), which prohibit the use of nonexempt federal contracts, grants or loans of facilities included on the EPA list of violating facilities. Issued pursuant to the “Acts” referenced in this Section.
- 3.10.8. Energy Policy and Conservation Act (Public Law 94-163). The successful Bidder agrees to recognize and comply with the mandatory standards and policies relating to energy efficiency contained in the Oklahoma State’s Energy conservation plan, the Oklahoma Department of Education’s associated plan, and comply with the Energy Policy and Conservation Act.
- 3.10.9. (H) Debarment and Suspension (Executive Orders 12549 and 12689). By submitted a response to this solicitation, the bidder attests that it is not a party excluded, suspended, barred, ineligible, excluded or otherwise listed as a party of such in the System for Award Management (SAM), in accordance with 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.”
- 3.10.10. (I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). For all contracts in excess of \$100,000 involving Federal funds, the bidder attests it has filed or will file the required certification under this Amendment. No Federal funds shall be used to pay any person or organization for influencing or attempting to influence an 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.
- 3.10.11. (J, K, L). To the extent applicable to the project, bidder, acquisition, use of Federal funds for such, and award, the bidder shall comply with 2 CFR § 200.323, § 200.216, and § 200.322. The school district reserves the right to award based on criteria specified in § 200.322.
- 3.10.12. Small, Disadvantaged, Women-owned, and Minority Businesses (SDWM). The school district encourages small, disadvantaged, women-owned and minority businesses to participate and engage in the solicitation process.
 - 3.10.12.1. Based on the product and/or service, and where it is practical, feasible, economically feasible, and in the best interest of the school district, the school district may divide total requirements into smaller tasks or quantities to encourage maximum participation of SDWM businesses.
 - 3.10.12.2. Establish delivery specification and/or requirements which encourage participation by SDWM business.
- 3.10.13. Oklahoma Disabled Veteran Enterprise Act. In accordance with the Oklahoma Disabled Veterans Enterprise Act, (74. O.S. § 85.44E), the school district may apply a three-point bonus preference to service-disabled veteran business, as defined by the Act, doing business as Oklahoma firms, corporations, or individuals, or which maintain Oklahoma offices or places of businesses involving the performance of any job or service.
 - 3.10.13.1. Qualifying bidders will need to disclosure their qualifying status within their solicitation response.
- 3.10.14. Special USDA Requirements.
 - 3.10.14.1. Buy American Provision (7 CFR Part 210.21(d)). By submitting a bid for food commodities or food products in response to a school district child nutrition solicitation, the successful bidder agrees to comply with the provisions of the Buy American Act and furnish the school district with information necessary to validate the



origin of the food or food products. The term **domestic food commodity or product** means agricultural USDA Foods produced in the United States, including Guam, American Samoa, the Virgin Islands, Puerto Rico, and the Northern Mariana Islands, and food products processed in the United States **SUBSTANTIALLY** using agricultural USDA Foods that are produced in the United States. The Conference Report accompanying Public Law 105-336 makes it clear that the term **SUBSTANTIALLY** means that over 51 percent of the processed food comes from American-produced products. (SD-24-2016). The school district reserves the right to reject any or all foods and/or products that do not meet the Buy American Act; however, the school district recognizes that there are foods and products that may not be domestically produced in conformance with the Act.

- 3.10.14.2. Geographic Preference. Except as permitted by the USDA and the National School Lunch Act, the use of geographic preference for the procurement of food and supplies for the school district's child nutrition program shall be prohibited.
- 3.10.14.3. Food Safety Recalls. All suppliers awarded a contract or purchase order involving consumable food and beverages shall notify the school district directly of any food safety recalls for products sold or delivered to the school district's child nutrition program. The school district shall be notified of the recall at the same time other customers are notified. Food safety recalls shall be mailed and emailed to the following:

Union Public Schools
Child Nutrition Department
Attn: Director & Associate Director
8506 East 61st Street, Tulsa Oklahoma 74133

powell.bradyn@unionps.org and gardner.jamie@unionps.org and warehouse@unionps.org

- 3.10.15. Federally funded bid protests. The school district's bid protest procedures are located at [bid_protest_procedures.pdf \(finalsite.net\)](#)

3.10.16. Miscellaneous.

- 3.10.16.1. The successful bidder/contractor agrees to maintain all required records for THREE years after final payment and all other pending matters (audits) are closed for all negotiated contracts.
- 3.10.16.2. All cost-plus-a-percentage-of-cost contracts by and between the school district and a bidder and/or successful bidder using Federal funds shall be prohibited and void.
- 3.10.16.3. The successful bidder shall provide the school district, the State Agency, the Comptroller General of the United States, or any of their duly authorized representatives access to any books, documents, papers and records of the successful bidder which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcripts.
- 3.10.16.4. Allowable costs paid from the school district's child nutrition fund and/or account shall be net of all discounts, rebates, and applicable credits. (Ref. Section 12 [n] of the NSLA and § 210.21 [f]).
- 3.10.16.5. Successful bidders must maintain documentation of costs and discounts, rebates and other applicable credits and must furnish such documentation upon request of the school district, the State Agency and USDA (school district child nutrition purchases).
- 3.10.16.6. No payment shall be made to a successful bidder from a cost reimbursement contract that is in excess of the successful bidder's actual, net allowable costs.

3.11. **Miscellaneous Conditions.**

- 3.11.1. All deviations of bid specifications and/or any of the requirements of this solicitation must be clearly stated provided in the bidder's response.
- 3.11.2. The school district will not reimburse any bidder for expenses incurred in preparing bids or any response to this solicitation.
- 3.11.3. The unit price submitted by the Bidder shall be the determining bid price when there is an error between the unit price and the calculated extended price.
- 3.11.4. The successful bidder shall provide or direct the manufacturer to provide the school district with current Safety Data Sheets for all hazardous materials furnished to the school district.
- 3.11.5. Quantities requested in this solicitation are estimated. The school district reserves the right to increase or decrease quantity of any item and to order any or all of the items quoted prices.
- 3.11.6. Failure to respond to this solicitation or advise the school district of a "NO BID" may result in forfeiture of future opportunities to receive bid solicitations.
- 3.11.7. Except as expressly stated herein, any document, statement, language or crossed out sentences intended to supplement, deviate, or modify any provision of this bid shall be grounds for having the bid disqualified.
- 3.11.8. No charges for delivery including, but not limited to the following, shall be permitted unless expressly included and itemized in the bid: delivery, shipping, freight, insurance, packaging, handling, carriage, licensing fees, cost of bonds, customs duty, parcel post, express, drayage, or other related shipping or handling fees.



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- 3.11.9. In the event the apparent low bidder fails to fulfill the requirements of this solicitation and its offer, the school district reserves the right to cancel the purchase order and award to another bidder or rebid
- 3.11.10. Price, quality, specifications, payment discounts, warranty, travel time for warranty service, service ability, delivery guarantee/ time maybe determining factors in awarding the bid.
- 3.11.11. Unless otherwise specified in the bidder's response, all prices must include delivery F.O.B. Destination freight pre-paid by the seller to the school district's location as specified on the bid form.
- 3.11.12. Delivery F.O.B. Shipping Point or Origin shall not be acceptable unless expressly stated in the solicitation.
- 3.11.13. Generally, products must be palletized together when shipping to the school district.
- 3.11.14. The successful bidder and/or its shipper must notify the Union Distribution Center at least 24 hours before estimated arrival data and time of shipment arrival.
- 3.11.15. Union Public Schools Distribution Center – 5526 S. 129th East Avenue, Tulsa, Oklahoma, 74134. Open Monday to Friday, 6:30 a.m. to 2:30 p.m. Receiving Office: 918-357-7070; Coordinator's office – 918-357-6179. Closed on all major holidays.
- 3.11.16. Your pricing response shall not exceed the fourth decimal point.
- 3.11.17. If a brand model or product has been discontinued and the manufacturer or producer has issued a replacement model, the bidder may submit the replacement model as an alternate.
- 3.11.18. If a branded model or product becomes discontinued after the solicitation terms has closed (expired), the bidder may offer the manufacturer and/or producer's replacement model/product, provided such is of commensurate rate and quality and the bid price remains unchanged. The school district reserves the right to accept or reject all substitutions whether to the bid or after award and order.
- 3.11.19. To evaluate offers, the school district reserves the right to seek clarification from any Bidder regarding its offer.
- 3.12. **Piggyback Provisions.** Upon mutual consent by and between the school district and the awarded bidder, the Parties may permit other Oklahoma school districts to piggyback on the awarded solicitation.
 - 3.12.1. If so permitted, the successful bidder will agree to extend the unit price offer to piggyback schools.
 - 3.12.2. All goods shall be delivered FOB Destination freight pre-paid by the successful bidder.
 - 3.12.3. For school districts outside of the Tulsa Metropolitan areas, the successful bidder may negotiation additional freight charges as necessary to cover its costs.
 - 3.12.4. Piggyback awards may be renewed for additional one (1) year terms for up to four (4) additional terms.
- 3.13. **Cooperatives and Oklahoma State Contract.**
 - 3.13.1. If the bidder has been awarded an Oklahoma State Contract for the goods or services requested in this solicitation, the pricing and terms must be equal to or better than the pricing offered under the Oklahoma State Contract for the Zone where the school district is located.
 - 3.13.2. Bidders may use other cooperative contract pricing as a basis for the pricing in the solicitation; however, the bidder should check to see if the school district is a participating member of the cooperative before submitting its offer.

A4. GENERAL TERMS AND CONDITIONS

- 4.1. **Contract Provision by Reference.** The school district's offer to purchase (awarded solicitation to bidder) by issuance of a purchase order and/or separate agreement/contract or both shall, unless otherwise agreed to by both parties, include these GENERAL TERMS AND CONDITIONS by reference. In the event of a conflict between any bidder quotes, agreements, proposals, offers, orders, order confirmations, emails, or invoices, these General Terms and Conditions shall supersede and prevail over all bidder furnished transaction information.
- 4.2. **Assignment.**
 - 4.2.1. A bidder cannot assign its offer to another entity.
 - 4.2.2. The awarded contract or purchase order shall not be assigned by the original bidder without the expressed written permission of the school district.
- 4.3. **Breach of Contract.**
 - 4.3.1. Unless expressly agreed to by and between the successful bidder and the school district, the school district reserves the right to revoke an award, cancel and terminate any order, purchase order or agreement for successful bidder's non-performance or violation of the requirements of this solicitation or award, including but not limited to, successful bidder's failure to provide goods and services in a timely and acceptable manner, failure to provide required insurance and certificates of insurance, failure to provide all required affidavits, or for any other reason found to be in violation of this solicitation and/or the awarded agreement.
 - 4.3.2. The school district may remove a supplier or bidder from its bid list for breach of contract, non-responsiveness, poor or non-performance of the contract.
 - 4.3.3. In the event a successful bidder is determined by a court of law to be found in breach of the contract, the successful bidder agrees to pay the District's for all actual and incidental damages arising from and out of the breach including, but not limited to, expenses related to purchasing the products from another supplier, rebidding and solicitation of the products, legal and court fees of the District.



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- 4.4. **Felony & Sex Offender Compliance for Contractors Working with or Providing Services to Children or Working on School Premise.** If awarded this solicitation, bidder agrees to comply with Oklahoma Statutory requirements of Title 70 O.S. § 6-101.48 and Title 57 O.S. § 589.
- 4.4.1. Sex Offender or Violent Offender. The successful bidder shall not permit any employee, entity, subcontractor, or volunteer (person) to work on school premises if said person is subject to registration or registered under the Oklahoma Sex Offenders Registration Act or the Mary Rippy Violent Crime Offenders Registration Act.
- 4.4.2. Employees with Conviction of Sex Offense or Felony.
- 4.4.2.1. A. No person or business having a contract with a school or school district to perform work on a full-time or part-time basis that would otherwise be performed by school district employees shall allow any employee to work on school premises if the employee is convicted in this state, the United States or another state of any felony offense unless ten (10) years has elapsed since the date of the criminal conviction or the employee has received a presidential or gubernatorial pardon for the criminal offense.
- 4.4.2.2. B. Every person or business performing services not subject to subsection A of this section on the property of a school or school district shall at the time of contracting be required to sign a statement declaring that no employee working on school premises under the authority of the business is currently registered or required to register under the provisions of the Oklahoma Sex Offenders Registration Act or the Mary Rippy Violent Crime Offenders Registration Act. Compliance with this statute shall be required of the person or private business, and there shall be no obligation placed upon a school district to ascertain the truthfulness of the affidavit.
- 4.4.2.3. C. A person or business having a written contract with a school or school district to perform work on a full-time or part-time basis that would otherwise be performed by school district employees may conduct a felony search of the employees of the person or entity who would be assigned that work through a request to the State Board of Education in the same manner as a felony search is afforded school districts by Section 5-142 of the title.
- 4.5. **Taxes.** Union Public Schools is a public school and a political subdivision of the State of Oklahoma. The school district is statutorily exempt from sales tax. Pricing furnished in response to the solicitation must be furnished net without sales tax.
- 4.6. **Other Laws and School Board Policy.** The Bidder agrees to comply with all federal, state, and local laws, ordinances, and policies. This requirement shall apply to school district policies including, but not limited to, policies regarding discrimination, sexual harassment, felony convictions, tobacco use, to name a few.
- 4.7. **Indemnification and Hold Harmless.**
- 4.7.1. General. Unless otherwise and specifically agreed to by both Parties, the successful bidder agrees to indemnify and hold the school district, its officers, employees, agents, and volunteers harmless from any third-party alleged claims, claims, losses, damages, injury, illnesses, and lawsuits arising from the negligent acts or omissions of the successful bidder in connection with the performance of the awarded contract.
- 4.7.2. Patents, Copyright, etc. The successful bidder agrees to indemnify and hold the school district, its officers, employees, agents, and volunteers harmless from any alleged claim, claim, damages, expense, loss, or liability arising from successful bidder's infringement(s), violation or omission of any patent, copyright, trade secret, trademark, or intellectual property rights of another involving any of the goods or services provided to the school district.
- 4.7.3. Violation of Laws. The successful bidder agrees to indemnify and hold the school district, its officers, employees, agents and volunteers harmless from any alleged claims, claims, damages, penalties, costs, losses, injuries, illnesses, and lawsuits arising from or out of the negligent acts or omission of the successful bidder in observing applicable laws, including but not limited to labor laws, minimum wage, discrimination, sexual harassment in connection with the performance with the submission of its offer and the performance of the awarded contract.
- 4.7.4. School district indemnification prohibited. Pursuant to the Oklahoma Attorney General's opinion dated April 14, 2006 (Op. 06-11), the Oklahoma Constitution prohibits state agencies and political subdivisions from obligating themselves beyond its fiscal year, and such provisions will be void and unenforceable, unless the amount of the liability is certain and budgeted at the time of contracting; therefore, the school district cannot and will not agree to indemnify, defend or hold harmless, in any manner, a bidder or successful bidder.
- 4.8. **Confidential Information of Solicitation and Contracts.** This solicitation, the bidder's response, pricing, fact sheets, information, purchase orders, contracts, agreement forms, privacy policy, orders, order forms, invoices and other related documents and accompanying data shall be subject to the inspection, reproduction, and release in accordance with the Oklahoma Open Records Act.
- 4.8.1. Marked confidential. **Any information marked by the bidder or successful bidder as "Confidential" (Look at the states' regulation).**
- 4.9. **Insurance.** Unless otherwise designated in the Special Terms and Conditions, the successful bidder and all contractors and subcontractors, furnishing installation, repair, construction, demolition, or other work onsite, shall possess the following insurance coverage.



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Type of Insurance	Limits of Liability
Workers Compensation	Oklahoma Statutory Benefit
Commercial General Liability	AM Best Rating of A VII 1,000,000 per occurrence 2,000,000 general aggregate 100,000 damages rented \$ 5,000 medical expense \$50,000 property damage
Automobile	\$1,000,000 combined single limit

- 4.9.1. Union Public Schools shall be named as the additional insured for the project with rights to subrogation.
- 4.9.2. The successful bidder and its contractors shall furnish certificate(s) of insurance within ten (10) calendar days following notice of award, notice to proceed or receipt of the school district’s purchase order.
- 4.10. **Guarantees and Warranties.** ALL GOODS SOLD TO THE SCHOOL DISTRICT SHALL BE MERCHANDISE, WHETHER CUSTOMLY PRODUCED OR NOT, OF MERCHANTABLE QUALITY AND RATE AND POSSESS A FITNESS FOR THE PARTICULAR PURPOSE FOR WHICH THE GOODS WERE DESIGNED, MARKETED AND SOLD. NO BIDDER OR SUCCESSFUL BIDDER SHALL BE PERMITTED TO DISCLAIM THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS.
- 4.11. **Work Performed.** ALL WORK PERFORMED, PURSUANT TO AWARD OF THIS SOLICITATION, SHALL BE COMPLETED IN ACCORDANCE WITH THE SPECIFICATIONS AND REQUIREMENTS OF THE SOLICITATION AND PROVIDED IN A GOOD AND WORKMANLIKE MANNER, AND IN ACCORDANCE WITH ALL FEDERAL, STATE, AND LOCAL STATUTES, LAWS, REGULATIONS AND ORDINANCES.
- 4.12. **Severability.** If any provision of this solicitation or resulting purchase order and/or agreement or the application thereof to any person or circumstance is found to be unenforceable or invalid, the remainder of this solicitation and resulting agreements and purchase orders, shall not be affected and the provisions of such shall remain enforceable to the extent permitted under law
- 4.13. **Governing Laws.** This solicitation and subsequent award shall be governed by and construed in accordance with the laws of the State of Oklahoma. Any action arising out of or relating to this bid and subsequent award and agreement shall be brought only in the federal or state courts located in Tulsa County, Oklahoma, and the jurisdiction of such courts.
- 4.14. **Purchase Orders.** All orders pursuant to award of any bid shall be subject to the terms and conditions of the school district’s purchase order.
 - 4.14.1. Purchase orders shall only be valid if approved by the Union Public School board.
 - 4.14.2. Payments will only be issued to the person, company or entity named on the face of the RFP or IFB cover sheet and as provided on the supplier’s remittance supplier registration.
 - 4.14.3. The school district reserves the right to withhold 10% of the total purchase price for all work performed until such work or project is completed in full.
- 4.15. **Invoices and Payment Terms.**
 - 4.15.1. Deposits and or down payments will not be permitted.
 - 4.15.2. All goods and services must be satisfactorily received before the school district will remit payment.
 - 4.15.3. Payment terms shall be NET 45 after receipt of goods and/or services and receipt of a proper itemized invoice. Alternate payment terms submitted by a bidder shall be subject to the school district’s approval. Award of the bid does not imply acceptance of bidder’s alternate payment terms.
 - 4.15.4. Payment shall be subject to receipt of a non-kickback statement for all invoices over \$25,000 as required per Title 62 O.S. § 310.9.
 - 4.15.5. The successful bidder shall include the purchase order number on all invoices.
- 4.16. **Renewal and Extension.** The school district reserves the right to renewal and extend award to the successful bidder for up to four (4) additional one-year terms beyond the initial first full year term.
- 4.17. **Federal Procurement.** The successful bidder shall comply with the federal procurement requirements referenced in a previous section above, as applicable to the goods and services furnished by the successful bidder.



B. SPECIAL TERMS AND CONDITIONS

B1. General

- B1.1. This Request for Proposal, awards, and purchases made as a result of this solicitation and award shall be subject to the Federal requirements 2 CFR part 200, subpart D and USDA implementing regulations 2 CFR part 400 and part 415, and 7 CFR .21(D) Buy American Act.
- B1.2. By submitting a bid or proposal, the Bidder acknowledges that they have read, understands, and agrees to the requirements of this solicitation.

B2. Federal Requirements and Provisions

- B2.1. The successful bidder must comply with all Federal Statutes Acts, including but not limited to the following:
 - B2.1.1. All products furnished in response to this solicitation must comply with 7 CFR part 210.21(d), Buy American Act provisions. The bidder must submit pricing for United States (U.S.) agriculture commodities (domestically produced and substantially processed in the U.S.)
 - B2.1.2. If there is a domestically produced product available for the item specified in the RFP or IFB, the bidder must bid a domestically produced product. Where there is a domestically produced item, the District must have pricing for it and consider it first. The bidder may also include non-domestically produced items as alternatives, provide the bidder has furnished a bid price for the equivalent domestically produced item. All non-domestically produced alternates must be identified as “non-domestically produced” products on the bid form.
 - B2.1.3. Where a domestically produced item has been awarded to a successful bidder, the successful bidder shall not substitute the awarded domestically produced product with a non-conforming non-domestically produced product in any order without the expressed permission of the District. If Bidder substitutes without disclosing the non-conforming substitution and without the expressed permission of the District, the successful bidder shall be deemed in breach of contract
 - B2.1.4. The District reserves the right to request from any bidder, and bidders shall furnish upon request, information and data which demonstrates that a domestic food product is not manufactured in sufficient and reasonable quantities of satisfaction quality to be purchased in lieu of non-domestic food products.

B3. Pricing

- B3.1. Awards of this solicitation intend to cover the estimated annual utilization of food and related products required for the period of July 1, 2023 to June 30, 2024. If you are unable or unwilling to furnish firm pricing on specific items for this period of time, in the bid you must specify the period of time in which you will guarantee pricing for those specific items.
- B3.2. The bidder must furnish minimum order quantities and/or minimum order dollar quantities required for direct shipment (shown as delivered price) from commodity producer’s plant.
- B3.3. Firm pricing for any fuel surcharges must be stated in the bid. Fuel surcharges must be firm for the duration of the contract period.
- B3.4. Brokers, distributors, and producers may all submit a bid in response to this solicitation.
- B3.5. Except where alternates are specifically requested, bidders should refrain from submitting more than one (1) bid per item.
- B3.6. Cost-plus a percentage of cost pricing is strictly prohibited.
- B3.7. All rebates, discounts, and incentives must be applied **as net off invoice**. The supplier shall, at the time of order, disclose any rebates and products qualifying for rebates at the time of order. Rebates must be applied and in accordance with the USDA regulations for Oklahoma Child Nutrition Program.
- B3.8. The District will not agree to reimburse any awarded bidder for any costs associated with preparing this solicitation, or cost, which are not reflected in the fixed pricing stated for the products and delivery on the bid form.
- B3.9. The annual utilization quantities specified on the id form are estimates and shall not be interpreted as a guaranteed order quantity. The district(s) reserve the right to increase or decrease the actual amount ordered. **Your response to this proposal is an offer. The acceptance of your bid/proposal and award thereof does not guarantee the issuance of an actual order or commitment to purchase the quantities specified herein.**
- B3.10. All bids must include firm, fixed price period guarantee in the Questionnaire section on WebProcure. Final price must reflect all rebates, discounts, and credits, i.e., the supplier shall pass on any available manufacturer rebates, discounts, and credits to the School District: Bid price less discounts, rebates, and credits.
- B3.11. Upon notification of a price increase by an awarded bidder, the District reserves the right to reject the price increase, evaluate the next lowest responsive bidder or re-bid the category.



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- B3.12. Any minimum order requirements must be clearly stated in the bidder's response bid/proposal.
- B3.13. Pricing must be stated in the unit price and extended price (where requested) and may be furnished in a manner not to exceed four (4) decimal points. In the event that a successful bidder offers any of its products, awarded to said bidder during the terms of this contract/bid award, to any other Oklahoma school district at a lower price than stated herein, the successful bidder must agree to provide the lower price to Union Public Schools, provided that the terms of the originating school's bid or pricing are commensurate with Union's order requirements, e.g., minimum orders. In the event such reduction occurs price decrease will be applied on a list-weight bases.
- B3.14. If products are discontinued or new products become available, the district may accept and purchase like products at the same bid price or lower price than the original bid price. Unit of measure pricing may apply in determining same or lower pricing, e.g., cost per ounce.
- B3.15. The district reserves the right to award products that meet the provisions of Buy American to a higher bidder even though the price of the non-domestic product is lower than the domestic (Buy American) product.

- B4. Escalation/De-Escalation Clauses**
 - B4.1. Bids for commodity items, where escalation or de-escalation in pricing might be necessary, must include a clear and definitive escalation and de-escalation pricing method, time period for the escalation/de-escalation (monthly, weekly, etc.), and the specific index used to determine the escalation. The initial bid price must be specified in the bid.

- B5. Evaluation and Award**
 - B5.1. Award will be made to the responsive and responsible bidder whose proposal is most advantageous to the school district with price and other factors being considered.
 - B5.2. Projected award date will be on or before June 1, 2023.

- B6. Contract/Agreement**
 - B6.1. The awarded contract may be a separate written agreement by and between both parties.
 - B6.2. The terms, conditions, and provisions of this solicitation, especially those relating to federal procurement requirements, shall be incorporated into any awarded Agreement.
 - B6.3. A school district blanket purchase order must also be accepted and referenced on all invoices.
 - B6.4. The Contract must include terms or reference the GENERAL CONDITIONS of this solicitation for the school district's right to terminate and/or cancel for convenience as required by 2 CFR PART 200.
 - B6.5. The Contract/Agreement shall be subject to the school board's approval.

- B7. Samples**
 - B7.1. During evaluation of the bid, samples may be required by the Child Nutrition Department. The bidder shall furnish samples within five (5) business days from date of request. Samples must be shipped free of charge to the Union Public Schools Distribution Center, 5526 South 129th East Avenue, Tulsa, Oklahoma 74134. Contact: David Bechtel 918-357-6179 or the Receiving Office 918-357-7070.
 - B7.2. The bidder is responsible for the cost of shipping and furnishing the samples at no charge to the district.
 - B7.3. DO NOT SEND SAMPLES UNTIL REQUESTED.

- B8. Delivery Requirements (Mandatory)**

All orders shall be subject to award and subsequent issuance of a purchase order shall include the following requirements:

 - B8.1. Delivery F.O.B. destination Union Public Schools Distribution Center and participating "Piggyback" schools designated point of deliver.
 - B8.2. Products must be palletized with other like products together.
 - B8.3. The supplier must notify the Union Distribution Center at least 24-hours prior to scheduled delivery.
 - B8.4. The District's Distribution Center has a dock.

Union Public Schools
Distribution Center-Truck Delivery Entrance
5526 S 129th East Avenue
Tulsa, Ok 74134
Quinton Guest (918)357-7070; David Bechtel (918)357-6179; Jeremy LaRue (918)357-7068
Delivery Times: Monday-Friday 6:30 am to 2:00 pm